

INFORMATIONAL COPY  
CITY COUNCIL INFORMATION  
NOVEMBER 17, 2009







# CITY COUNCIL AGENDA

Tuesday, November 17, 2009

7:00 p.m.

Coon Rapids City Center  
Council Chambers

COUNCIL ACTION 11/17/09

Open Mic/Public Comment	
Call to Order	
Pledge of Allegiance	
Roll Call	
1. Adopt Agenda	
2. Cons. Approval of November 4, 2009, Council Minutes	
3. Consent Agenda: <ul style="list-style-type: none"> <li>a. Approve Encroachment Agreement, Allan K. Butler and Donna V. Butler, 95<sup>th</sup> Avenue NW and East River Road, Project 03-15</li> <li>b. Accept Trail Easement and Conveyance of Outlot D for Park Purposes, Crescent Ponds 4<sup>th</sup> Addition, Signature Ventures, LLC</li> <li>c. Cons. Resolution 09-107 to Accept the Grant of Monies To Be Used Toward the Anoka County DWI Task Force from the Minnesota Department of Public Safety, Office of Traffic Safety</li> </ul>	
4. Open Mic Reports: <ul style="list-style-type: none"> <li>a. Jerry Pierce, 12236 Partridge Street re: Bunker Hills Clubhouse</li> </ul>	
5. Main Street Upgrade, Project 07-36: <ul style="list-style-type: none"> <li>a. Public Hearing, 7:00 p.m. (Continued)</li> <li>b. Cons. Resolution Ordering Project and Preparation of Plans, Main Street Upgrade from Thrush Street to Crane Street</li> </ul>	
6. Commercial Antenna Tower Permit, Clearwire Communications: <ul style="list-style-type: none"> <li>a. Public Hearing, 7:00 p.m.</li> <li>b. Approve Commercial Antenna Tower Permit at 11710 Round Lake Boulevard/Classic Bowl, 09WC13</li> </ul>	
7. Commercial Antenna Tower Permit, Clearwire Communications: <ul style="list-style-type: none"> <li>a. Public Hearing, 7:00 p.m.</li> <li>b. Approve Commercial Antenna Tower Permit at 12156 Olive Street/Sand Creek Elementary School, 09WC17</li> </ul>	
8. Cons. Adoption of Ordinance Restricting Parking on Both Sides of Main Street NW from Thrush Street NW to Avocet Street NW	
9. Cons. Adoption of Ordinance Repealing Ordinance No. 1036 and Establishing Stop Signs on Eastbound and Westbound 98 <sup>th</sup> Lane NW at Bluebird Street NW	
10. Cons. Appeal of Board of Adjustment and Appeals Decision of Staff's Determination, Case 09-4V, SW Wold Construction on behalf of Builders Mortgage Company, LLC (Villas on the Boulevard Site Securities)	

11.	Cons. Revising Miscellaneous Assessment Process	
12.	2010 Fee Revisions: a. Cons. Introduction of Ordinance to Revise Certain License Fees, Service Fees, and Related Charges b. Cons. Introduction of Ordinance Establishing Permit and Inspection Fees for the Building Inspections Division c. Set a Public Hearing for December 1, 2009, Regarding Fee Increases for Off-Sale and On-Sale 3.2 Malt Liquor	
13.	Reconsider Ordinance No. 2023 Updating the Regulation for Open Burning	
14.	Other Council Business	
15.	Cons. Tentative Agenda of December 1, 2009	
16.	Adjourn	



## UNAPPROVED

### COON RAPIDS CITY COUNCIL MEETING MINUTES OF NOVEMBER 4, 2009

#### OPEN MIC/PUBLIC COMMENT

Jerry Pierce, 12236 Partridge Street NW, questioned why the City was using a construction design manager for the Bunker Hills Clubhouse project and asked what function Amcon would play in the process. He felt the architect had sufficient experience and resources to complete that phase of the project.

#### CALL TO ORDER

The first regular meeting of the Coon Rapids City Council for the month of November was called to order by Mayor Tim Howe at 7:08 p.m. on Tuesday, November 4, 2009, in the Council Chambers.

#### ROLL CALL

Members Present: Mayor Tim Howe, Councilmembers Melissa Larson, Paul Johnson, Joe Sidoti, Bruce Sanders, and Scott Schulte

Members Absent: Councilmember Denise Klint

#### PLEDGE OF ALLEGIANCE TO THE FLAG

#### 1. ADOPT AGENDA

MOTION BY COUNCILMEMBER SANDERS, SECONDED BY COUNCILMEMBER SIDOTI, TO ADOPT THE AGENDA AS PRESENTED. THE MOTION PASSED UNANIMOUSLY.

#### 2. PROCLAMATION DECLARING NOVEMBER 2009 AS HOMELESSNESS MONTH

City Manager Fulton presented a memorandum to Council stating the Anoka County Community Continuum of Care, along with the Heading Home Anoka committee, is sponsoring an event called Sleep Out 2009, Be Part of Something Big First Annual Community Challenge in an effort to promote education and awareness to help end homelessness. The County feels it is essential that all community members be aware of the importance of homelessness prevention and the impact their participation can have on ensuring that all individuals and families have access to a warm, safe place to call home in our community. Community partnerships, awareness, and the desire to provide warm, safe housing in our community are the important themes of the event.

The Anoka County Board of Commissioners proclaimed November Homelessness Awareness Month. Their goal is to have each city in Anoka County join the effort to promote public awareness of homelessness.

Mayor Howe proclaimed November 2009 as Homeless Month.

3. ADVISORY COMMISSIONS:

A. CONSIDER RESOLUTION 09-105 APPOINTING MEMBERS TO  
SUSTAINABILITY (GREEN) COMMISSION

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Staff Liaison Sinclair presented a memorandum to Council stating selected individuals are being recommended for appointment to the newly-formed Sustainability (Green) Commission.

In response to the ever-increasing level of interest and importance in addressing the issue of sustainability in communities, the City Council adopted an ordinance on June 16, 2009, that provides for an ongoing, standing Sustainability or "Green" Commission. The Commission will be comprised of three business representatives, three residents, and three at-large representatives serving three-year revolving terms. The Commission will provide specific focus on residential and business sustainability practices and other viable ways for Coon Rapids to become a more sustainable community. Business and neighborhood subcommittees will also be formed to study best practices for their areas.

Due to the emerging nature of this topic, it is expected the Commission's role will evolve and grow in advancing the Council's sustainability goals for the community. Meeting dates and times will be established, but will likely be on a regular, monthly basis at a day and time to be determined.

A panel consisting of Mayor Howe, Public Services Director Steve Gatlin, and Recycling Coordinator Colleen Sinclair interviewed 14 applicants in early October, and after discussion the panel recommended appointment of the following individuals to the Green Commission: Stacey Demmer, Joeleen Famoso, Donald Stauffer, Chris Backes, Mark Broderick, Charmaine Cavin, Dave King, Robert Krahn, and Gabriel Routh.

The newly appointed members of the Sustainability Commission introduced themselves.

MOTION BY COUNCILMEMBER SIDOTI, SECONDED BY COUNCILMEMBER SCHULTE, TO ADOPT RESOLUTION 09-105 APPOINTING INDIVIDUALS TO THE SUSTAINABILITY (GREEN) COMMISSION FOR THE FOLLOWING TERMS:

STACEE DEMMER, JOELEEN FAMOSO, DONALD STAUFFER – DECEMBER 31, 2010  
CHRIS BACKES, MARK BRODERICK, CHARMAINE CAVIN – DECEMBER 31, 2011  
DAVE KING, ROBERT KRAHN, AND GABRIEL ROUTH – DECEMBER 31, 2012

THE MOTION PASSED UNANIMOUSLY.

B. CONSIDER RESOLUTION 09-106 APPOINTING MEMBER TO ARTS  
COMMISSION

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A memorandum was presented from Staff Liaison Sorensen stating Kristin Shields submitted an application for the Arts Commission after attending their October 20 Arts Commission meeting.

After discussion with the applicant, the Arts Commission recommended Ms. Shield's appointment to the Arts Commission with a term expiring December 31, 2012.

MOTION BY COUNCILMEMBER SCHULTE, SECONDED BY COUNCILMEMBER SANDERS, TO ADOPT RESOLUTION 09-106 APPOINTING KRISTIN SHIELDS TO THE ARTS COMMISSION WITH A TERM EXPIRING DECEMBER 31, 2012. THE MOTION PASSED UNANIMOUSLY.

4. CONSIDER APPROVAL OF MINUTES:
    - A. OCTOBER 13, 2009, COUNCIL WORK SESSION
    - B. OCTOBER 20, 2009, COUNCIL MEETING
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MOTION BY COUNCILMEMBER SIDOTI, SECONDED BY COUNCILMEMBER LARSON, FOR APPROVAL OF THE MINUTES OF THE OCTOBER 13, 2009, COUNCIL WORK SESSION. THE MOTION PASSED UNANIMOUSLY.

MOTION BY COUNCILMEMBER SCHULTE, SECONDED BY COUNCILMEMBER JOHNSON, FOR APPROVAL OF THE MINUTES OF THE OCTOBER 20, 2009, COUNCIL MEETING.

Councilmember Schulte noted that on Page 6, first line, Councilmember Sidoti called the question.

THE MOTION PASSED UNANIMOUSLY.

5. CONSENT AGENDA:
    - A. APPROVE AGREEMENT WITH JOHN AND MERRIE KISCH FOR SANITARY SEWER REPAIR, 510 115<sup>TH</sup> AVENUE NW
    - B. APPROVE AGREEMENT WITH RICHARD AND DONAMAE ROMAN FOR WATER SERVICE REPAIR, 32 105<sup>TH</sup> LANE NW
    - C. AUTHORIZE FINAL PAYMENT, PROJECT 06-38, EGRET BOULEVARD BRIDGE RECONSTRUCTION
    - D. CONSIDER RESOLUTION 09-104 CALLING FOR A PUBLIC HEARING ON DECEMBER 1, 2009, ON A PROPOSAL FOR A MULTIFAMILY HOUSING DEVELOPMENT PROJECT AND AUTHORIZING THE PUBLICATION OF A NOTICE OF THE HEARING (TRALEE TERRACE PROJECT)
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MOTION BY COUNCILMEMBER SCHULTE, SECONDED BY COUNCILMEMBER SANDERS, FOR APPROVAL OF THE CONSENT AGENDA. THE MOTION PASSED UNANIMOUSLY.

## 6. OPEN MIC REPORTS

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Mayor Howe provided a recap of the issues brought forward at the last Council meeting along with staff's response.

### A. WILLIAM JOHNSON, 360 97<sup>TH</sup> AVENUE RE: POLICE DEPARTMENT INVESTIGATION

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Chief of Police Wells presented a memorandum to Council stating Mr. Johnson had some concerns about the Police Department's investigation of crimes occurring at his properties at 350 and 360 97<sup>th</sup> Avenue.

The Police Department's records show that there have been two vandalisms and two thefts at Mr. Johnson's properties on 97<sup>th</sup> Avenue this year. Mr. Johnson indicated that he felt the Police Department could have done more in regards to investigating these crimes. Unfortunately, proving who is responsible for random crimes at vacant properties can be extremely difficult. That being said, if Mr. Johnson is unhappy with the level of police service from officers who respond, he is encouraged to call the on-duty sergeant with his concerns.

### B. DON NORDINE, 11514 YUCCA STREET NW RE: STRIPING AT ROUND LAKE BOULEVARD AND COON RAPIDS BOULEVARD

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Director of Public Services Gatlin presented a memorandum to Council stating Don Nordine appeared at Open Mic at the October 20, 2009, Council meeting. He requested consideration for striping of Round Lake Boulevard south of Coon Rapids Boulevard at the intersection to better define turn lanes. The north side of this intersection has turn lane markings and arrows for left and right turns and through movements. Mr. Nordine suggested that the south side of the intersection be similarly marked.

Staff has reviewed the request in the field. The intersection currently has a free right turn lane along with adequate space for a left turn lane and a through lane. Mr. Nordine brings up a valid point. This intersection is not marked and lane markings including lane lines and turn arrows should be installed.

Staff will contact the painting contractor and see if lane markings can be installed this fall. Because of the lateness of the year, it may not be possible to have the lanes marked this fall. If the markings cannot be done this fall, they will be done next spring. Staff suggests the lane lines be installed along with arrows for left and right turns and a through lane.

The budget for lane pavement markings is included in the Streets Department annual budget.

Mr. Gatlin noted that the work has been completed since the memo was written.

7. MAIN STREET UPGRADE, PROJECT 07-36:
- A. PUBLIC HEARING, 7:00 P.M.
  - B. CONSIDER RESOLUTION ORDERING PROJECT AND PREPARATION OF PLANS, MAIN STREET UPGRADE FROM THRUSH STREET NW TO CRANE STREET NW
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City Engineer Doug Vierzba presented a memo to Council stating the Engineering Division had prepared a feasibility report regarding proposed improvements on Main Street. The County is proposing to upgrade the road in 2010 and the City needs to determine if sanitary sewer and watermain should be extended to serve homes that are not presently served. Council is scheduled to hold a public hearing on November 4 at 7 p.m. and then determine if the sewer/watermain project should be ordered.

There are a few homes that front onto the north side of Main Street that do not have both sanitary sewer and water service at this time. The City hired an appraiser to determine what the "benefit" would be to these properties for sewer and watermain. The City cannot assess more cost than what the "benefit" is for a property.

The total estimated cost of sanitary sewer and watermain extension is \$73,000. The appraiser estimates that the "benefit" for sewer/watermain would be approximately \$28,200 leaving a project shortfall of an estimated \$44,800. If the City decides to proceed with the sanitary sewer and watermain, the City would have to pay the shortfall from the City special assessment fund. Staff did not recall any other project where the City has paid for initial installation of sewer and watermain. However, this case is unusual in that the proposed utilities are only serving one side of the utility. In a normal situation, there are properties on both sides of the utility that would be assessed. Also, one of the lots is proposed to be purchased by the County and used for a pond area and is therefore, not assessable.

The current situation for these four properties is:

- 2285 Main Street has City water, needs City sewer
- 2309 Main Street has City water, needs City sewer
- 2335 Main Street needs City water and City sewer
- 2355 Main Street needs City water and City sewer (vacant lot)

This proposed project is not financially feasible because not all costs can be assessed due to lack of benefiting properties. Therefore, the City Council needs to decide whether or not to subsidize the project. If the sanitary sewer and watermain are installed as part of the County road upgrade, there would be cost savings. If the utility project were to take place in the future, there would be extra costs associated with traffic control, street repair, driveway replacement, and turf replacement. If sewer and watermain are to be extended to serve these properties, it should be done now as part of the County project. If the project proceeds, assessments would be approved by Council approximately a year from now, after construction is completed. Assessments would be spread over a 20-year period beginning no earlier than 2011.

Mayor Howe opened the public hearing at 7:40 p.m.

None of the affected property owners were present.

Councilmember Schulte stated he had owned property in this area at one time and when he wanted to split his lot the City required sewer and water, which he installed at a high cost. He stated he had a problem with the other taxpayers subsidizing this when in every other case the landowner had to pay for this service themselves.

Councilmember Sidoti asked if the landowners had received notice. City Engineer Vierzba responded they had received notice of the public hearing.

Councilmember Sidoti stated he agreed with Councilmember Schulte and had difficulty approving this.

Mayor Howe asked how many homes in the City were without City sewer and water. City Engineer Vierzba responded he could not think of any other properties.

Councilmember Sanders noted the City could not force anyone to have City sewer and water, especially when the cost to put it in was higher than the proposed value. He also agreed with the other Councilmembers that the City should not subsidize. He stated the Council should either not move forward with this or the landowners should pay for it.

Mayor Howe asked why this should to be done and what is the benefit to the City. City Engineer Vierzba responded it was his opinion that every property in the City should have City sewer and water. He noted private wells may fail or become contaminated.

Assistant City Attorney Dave Brodie stated because this was not a petitioned project, a resolution must be approved by six Councilmembers.

Mayor Howe asked if this was time sensitive. City Engineer Vierzba responded the County wanted the final plan done within the next month for submission to the State.

Mayor Howe stated he would like the City to contact the property owners again and explain the situation.

MOTION BY MAYOR HOWE, SECONDED BY COUNCILMEMBER SIDOTI, TO CONTINUE THE PUBLIC HEARING AND TABLE CONSIDERATION OF RESOLUTION ORDERING PROJECT AND PREPARATION OF PLANS, MAIN STREET UPGRADE FROM THRUSH STREET NW TO CRANE STREET NW, UNTIL THE PROPERTY OWNERS CAN BE RE-CONTACTED. THE MOTION PASSED 4-2, COUNCILMEMBERS JOHNSON AND SCHULTE OPPOSED.

8. CURRENCY EXCHANGE LICENSE RENEWAL:
- A. PUBLIC HEARING, 7:00 P.M.
  - B. 2010 LICENSE RENEWAL FOR PAWN AMERICA, 15 COON RAPIDS BOULEVARD
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City Clerk Anderson presented a memorandum to Council stating the Minnesota Department of Commerce has forwarded for Council consideration the currency exchange license renewal of Pawn America Minnesota, 15 Coon Rapids Boulevard.

The Department of Commerce requires the governing body to hold a public hearing and render a decision regarding the license renewal within 60 days, or by November 27.

The Minnesota Department of Commerce conducted a state level background review on the appropriate personnel and the Coon Rapids Police Department conducted a local background check on the business operation. No matters which would impact concurrence with the license were discovered.

Mayor Howe opened and closed the public hearings at 7:48 p.m. since no one appeared to address the Council.

MOTION BY COUNCILMEMBER SCHULTE, SECONDED BY COUNCILMEMBER JOHNSON, TO CONCUR WITH MINNESOTA DEPARTMENT OF COMMERCE RENEWAL OF THE 2010 CURRENCY EXCHANGE LICENSE FOR PAWN AMERICA MINNESOTA, 15 COON RAPIDS BOULEVARD. THE MOTION PASSED UNANIMOUSLY.

9. CONSIDER CELL TOWER CO-LOCATION APPLICATIONS FROM CLEARWIRE, 11350 FOLEY BOULEVARD, 13101 HANSON BOULEVARD, 1605 111<sup>TH</sup> AVENUE, 10790 UNIVERSITY AVENUE, 11574 CROOKED LAKE BOULEVARD:
- A. PUBLIC HEARING, 7:00 P.M.
  - B. APPROVE THE CO-LOCATION OF COMMERCIAL ANTENNAS FOR PLANNING CASES 09WC10 AND 09WC11
  - C. APPROVE THE CO-LOCATION OF COMMERCIAL ANTENNAS FOR PLANNING CASES 09WC8, 09WC9, AND 09WC12
- 

Planner Harlicker presented a memorandum to Council stating Clearwire Communications is requesting permit approval to co-locate antennas on five existing towers and install ground equipment.

Clearwire Communications is proposing to co-locate internet WiMax antennas on cell towers in the City. Clearwire was previously approved for seven co-location requests, three by Council and four administratively. Clearwire is planning to apply for a total of 18 new antenna sites, the majority of which are co-location requests although some will require new poles.

To streamline the process and provide better service, these five requests are being combined into one report and require Council approval because they are located on or within 500 feet of property that is zoned or guided Residential. A public hearing is required and staff recommends a combined public hearing for all five requests be held.

Three of the applications, 09WC12, 11574 Crooked Lake Boulevard; 09WC9, 13101 Hanson Boulevard and 09WC 8, 11350 Foley Boulevard, request co-location on City water towers. The applicant is currently working on lease agreements with the City which will include monthly rental. The other two co-location applications are for existing towers not owned by the City. All of the Clearwire's co-location requests include equipment cabinets that will be painted a tan color.

City Code requires the City Council hold a public hearing on these applications and that a decision be made no later than Council's next regular meeting following this meeting date unless an extension has been agreed to by the applicant. No extension has been requested and staff has no reason to request an extension.

The applications were compared to the criteria found in City Code Chapter 13-1200 and the applications are in conformance.

Mr. Harlicker recommended approval of Planning Cases, 09WC10 and 09WC11 with the condition the equipment cabinet must be painted tan.

Mr. Harlicker recommended approval of Planning Cases 09WC8, 09WC9 and 09WC12 with conditions that the applicant sign lease agreements with the City prior to applying for building permits and the installation of antennas and the equipment cabinet must be painted tan.

Mayor Howe opened the public hearing at 7:51 p.m.

Don Heckes, 1698 132<sup>nd</sup> Avenue NW, stated he had received a notice in the mail regarding the tower permit on Hanson Boulevard. He stated he understood there was only supposed to be so many towers. He asked how many towers were going to be put in. He stated he was concerned about the environment and health issues as these towers emit microwaves. He asked where the line would be drawn on this. He asked where the money for water towers went. He noted his neighbors had not received any notice of this and asked if this was done randomly.

City Planner Harlicker responded residents within 850 feet are notified. Mr. Heckes responded he had checked with his neighbors and they had not received any notice.

Mayor Howe stated staff would check into this.

Mr. Heckes asked how environmentally dangerous were the antennas.

Mr. Heckes asked why the money generated from the towers was not put into the water/sewer fund



instead of putting the funds into the general fund. Mayor Howe responded three of these antennas were on towers, but some of the antennas were not on towers.

Councilmember Schulte noted if the water fund gets low, the general fund covers the shortage.

Steve Stulz, Clearwire representative, stated Clearwire was approved by the FCC to transmit on the bands, which were separate bands for the cell phone companies. He indicated there is no interference with electronics or cell phone transmissions.

Richard Bremmer, 810, 98<sup>th</sup> Avenue NW, asked what the purpose of the antennas was. Mr. Stulz stated they were proposing a point-to-point high speed wireless for broadband.

Mayor Howe closed the public hearing at 8:04 p.m.

MOTION BY COUNCILMEMBER SCHULTE, SECONDED BY COUNCILMEMBER LARSON, TO APPROVE THE PROPOSED CO-LOCATION OF COMMERCIAL ANTENNAS FOR PLANNING CASES, 09WC10 AND 09WC11 WITH THE FOLLOWING CONDITION:

1. THE EQUIPMENT CABINET MUST BE PAINTED TAN.

AND TO APPROVE THE PROPOSED CO-LOCATION OF COMMERCIAL ANTENNAS FOR PLANNING CASES 09WC8, 09WC9 AND 09WC12 WITH THE FOLLOWING CONDITION:

1. THE APPLICANT SIGN LEASE AGREEMENTS WITH THE CITY PRIOR TO APPLYING FOR BUILDING PERMITS AND THE INSTALLATION OF ANTENNAS.
2. THE EQUIPMENT CABINET MUST BE PAINTED TAN.

THE MOTION PASSED UNANIMOUSLY.

10. CONSIDER ADOPTION OF ORDINANCE AMENDING CITY CODE; UPDATING THE REGULATION OF OPEN BURNING

City Attorney Hiljus presented a memorandum to Council stating the Fire Department has responded to many complaints about recreational fires in 2009, and in some cases has responded to the same property multiple times. In addition, the Council has heard multiple complaints from citizens about recreational fires. As a result, staff researched and drafted an update to the City's open burning regulations that includes the City's regulation of recreational fires. The new regulations are proposed to go into effect January 1, 2010 and include:

- Maximum size of a recreational fire remains 3x3 feet.
- Only clean, dry wood can be used that produces little detectable smoke or soot beyond the property line. Still no burning of leaves, trash or brush allowed.

**UNAPPROVED**

- Someone at least 18 years of age must attend at all times.
- Burning between 12 noon and 12 midnight only with a maximum duration of 6 hours per fire.
- Only one recreational fire can be conducted on a property at a time.
- No recreational fires are allowed when wind speeds exceed 15 miles per hour.
- Fire officials or police officers may order the fire extinguished if smoke is objectionable beyond the property line. Once ordered the fire may not be re-started for at least 12 hours and only if it then complies with all other requirements.
- The administrative penalty for a recreational fire violation increases to \$75. For any second or subsequent offense committed within 18 months of a prior violation the penalty doubles. The fine may be assessed against the property if unpaid.
- Criminal prosecution may be brought for any offense if the severity of the violation justifies doing so.

At the October 20 introduction, Mayor Howe asked the Council to consider further restricting the hours of recreational fires on Sunday through Thursday from noon to 10:00 p.m. If the Council is so inclined, the Council may wish to also restrict the maximum duration of a recreational fire to four hours during these weekdays.

Councilmember Schulte also asked about the language in 12-415(4)(c)(ix) that states a recreational fire must be conducted in a manner that does not cause objectionable smoke beyond the property line as determined by the Fire Official or Police Officer. It is important to note that there is not a scientifically measurable standard for when smoke becomes "objectionable" beyond the property line. However, a person conducting a recreational fire will not receive a ticket for "objectionable" smoke. This language is an enforcement tool that needs to be read in conjunction with paragraph 13(c) which gives the fire official or peace officer authority to order that the fire be extinguished. Failure to extinguish the fire, or starting the fire again within 12 hours would result in a citation.

MOTION BY COUNCILMEMBER SIDOTI, SECONDED BY COUNCILMEMBER JOHNSON, TO ADOPT THE ORDINANCE UPDATING THE REGULATION OF OPEN BURNING AMENDING SECTION 12-415 OF THE CITY CODE AND ADDING THE RESTRICTION OF RECREATIONAL FIRES SUNDAY THROUGH THURSDAY 12 NOON TO 10 P.M. AND RESTRICTING THE DURATION OF RECREATIONAL FIRES DURING THE WEEKDAYS TO FOUR HOURS. THE MOTION PASSED UNANIMOUSLY.

- 11 CONSIDER COON RAPIDS MORTGAGE ASSISTANCE FOUNDATION  
RECOMMENDATION FOR NEW LOAN PROGRAM:
    - A. APPROVE THE PROGRAM GUIDELINES FOR THE REGENERATIONS DOWN  
PAYMENT ASSISTANCE LOAN PROGRAM:
    - B. APPROVE FUNDING FOR THE REGENERATIONS DOWN PAYMENT  
ASSISTANCE LOAN PROGRAM
    - C. APPROVE FUNDING FOR MARKETING
-

Housing and Zoning Coordinator Bennett presented a memorandum to Council stating the City Council is asked to consider a down payment assistance loan program presented by the Coon Rapids Mortgage Assistance Foundation Board of Directors. The program provides down payment assistance in the form of a forgivable deferred loan for use with a specific mortgage product that requires rehabilitation or renovation of the property. The Board of Directors recommends that \$300,000 in Coon Rapids Mortgage Assistance Foundation program funds be made available for this program.

At a September 24<sup>th</sup> meeting, the Coon Rapids Mortgage Assistance Foundation (CRMAF) Executive Committee discussed proposals for a down payment assistance program and staff was directed to prepare program guidelines for a forgivable loan product required to be paired with the Federal Housing Administration (FHA) Section 203(k) mortgage. The FHA is part of the U.S. Department of Housing and Urban Development (HUD). The Section 203(k) program is HUD's principal program for the purchase and repair of single family properties.

Guidelines for the proposed Coon Rapids ReGenerations Down Payment Assistance Program were developed and presented to the CRMAF Board of Directors on October 12, 2009. The program guidelines reflect the discussion of the Board of Directors at their meeting. The guidelines generally provide for the following:

- Funds are reserved for down payment assistance only; the maximum loan amount is \$6,000.
- Funds are provided in the form of a second mortgage forgiven over a ten year period. No payments are required; no interest is assessed unless the loan is repaid within the first three years after closing.
- Funds must be used in conjunction with a primary Section 203(k) mortgage to purchase a single-family detached property that will be rehabilitated or renovated in a project costing not less than \$10,000.
- An inspection of the property will be required to determine code deficiencies. These deficiencies will be addressed in the rehab process.
- Rehab or renovation must be completed by a state licensed contractor; work must be completed within six months of loan closing.
- The borrower must occupy the property as their principal, homesteaded residence.
- First-time homebuyers will be required to complete a homeownership education class.
- No income limit.
- No maximum purchase price or property value limit.
- Total mortgage debt on the property may not exceed the Section 203(k) limit which is the lesser of the following: (a.) the as-is value or purchase price of the property, whichever is less, plus the estimated cost of rehabilitation, or (b.) 110 percent of the after-improved appraised value of the property.
- The program provides for assumption of the ReGenerations program loan under guidelines to be developed and generally described below.

Many of the program guidelines are derived from the Section 203(k) program and participating lenders' requirements. Discussion of these items can be found in the staff memorandum of October

12, 2009, to the CRMAF Board of Directors and the minutes from their meeting. At that meeting, the Board directed that subordination be eliminated and that a provision for assuming a ReGenerations loan be included in the program guidelines. A mortgage assumption policy is being developed requiring:

- The maximum benefit to the Seller not exceed the principal amount of the ReGenerations loan forgiven according to the loan payment terms as of the date of the assumption.
- Re-establishment of the original ReGenerations loan payment terms as of the date of assumption.
- The new borrower occupy the property as their principal residence.
- First-time homebuyers complete a homeownership education class.
- The buyer's mortgage be of a "prime" investment grade and the loan to value ratio of the debt on the property not exceed the limits required of the new mortgage product.
- Approval subject to the CRMAF Board of Directors Executive Committee.

The policy would also provide for the subordination of the ReGenerations loan to the interest of the new buyer's singular, principal mortgage. The policy will come before Council for approval, unless otherwise directed.

The CRMAF Board of Directors also directed that \$2,500 be established for marketing the program and that additional marketing funds be approved by the Board of Directors. The Board did not set an amount; save proposes a \$5,000 maximum. Marketing funds for the Coon Rapids Housing Loan Program are taken from the CRMAF program fund. Staff intends to work with Section 203(k) lenders and the North Metro Realtors Association publicizing this program.

Donna Naeve summarized the history of the Mortgage Assistance Foundation and highlighted some of its previous programs.

Councilmember Johnson asked if this was for residential structures only. Ms. Naeve responded it was, but if a person wanted to convert a double home into a single-family home there was a provision for that.

**MOTION BY COUNCILMEMBER SANDERS, SECONDED BY COUNCILMEMBER JOHNSON, TO CONCUR WITH THE RECOMMENDATION OF THE COON RAPIDS MORTGAGE ASSISTANCE FOUNDATION BOARD OF DIRECTORS AND:**

- A. APPROVE THE PROGRAM GUIDELINES FOR THE REGENERATIONS DOWN PAYMENT ASSISTANCE LOAN PROGRAM;
- B. APPROVE FUNDING FOR THE REGENERATIONS DOWN PAYMENT ASSISTANCE LOAN PROGRAM IN THE AMOUNT OF \$300,000;
- C. APPROVE FUNDING FOR MARKETING IN THE AMOUNT OF \$2,500 WITH ADDITIONAL FUNDING NOT TO EXCEED \$2,500 FOR APPROVAL BY THE CRMAF BOARD OF DIRECTORS.

THE MOTION PASSED UNANIMOUSLY.

12. CONSIDER APPEAL OF RENTAL LICENSE RENEWAL DENIAL, ALAN AND DENISE WILLIAMS, LICENSE NO. 19531, 10572 ROBINSON DRIVE

Housing and Code Inspector Posch presented a memorandum to Council stating Alan and Denise Williams owns the rental property at 10572 Robinson Drive and have had a rental license since May 2001. The new rental ordinance requires landlords to submit copies of the form written rental lease and renters applications. The Williams are appealing staff's decision to deny renewal of the rental license due to failure to provide workable copies of those rental documents.

On April 28, 2009, the Coon Rapids City Council adopted the new rental license ordinance City Code Chapter 12-900. The new rental ordinance made significant changes to the previous ordinance, including:

All rental property owners must complete a Crime Free Rental Housing Training or provide proof that they have completed a similar course in the past or with another community.

All leases must include the Crime-Free/Drug Free Addendum.

Landlords are required to submit their rental or rental renewal applications: blank copies of the Lease documents, Renter's Application, and a copy of the crime Free Rental Housing Training certificate.

The Williams were sent a rental renewal application on October 6, 2009 for Rental License No. 19531, which expires on November 1, 2009. Mr. Williams immediately sent in the required fee and emailed the renter's application and lease with the Crime/Free Drug/Free Addendum. On August 15, 2009, he completed the Crime Free Multi-Housing Training. However, the required copy of the lease was blanked out entirely with only the title left to view, and a copy of the renter's application was changed to a symbol font that was not recognizable.

On October 19 City staff rejected the rental renewal application for failure to provide the needed documents. On October 22, 2009, Mr. Williams filed an appeal to the City Council.

City Code Chapter 12-903(7) requires that all rental and renewal applications be accompanied by a copy of the form written rental application that will be used to screen all potential tenants and a copy of the form lease agreement that will be used for all tenants. The written rental application must include sufficient information so that the licensee can conduct appropriate criminal background and credit checks on prospective tenants.

The written lease agreement must include the Lease Addendum for Crime-Free/Drug-Free Housing. Staff is requiring blank copies of those documents. It is not necessary to know who the renters are but that they have a viable lease and are being screened.

Mr. Williams is concerned that landlords, in some instances, are paying for a lease and then required to submit it to the City where anyone can have access to it. He is also objecting on the grounds that a

lease is a private confidential document between a tenant and landlord. If he is required to submit the lease to the City it is no longer confidential information. Staff has assured Mr. Williams that any documents submitted to the City are nonpublic and the forms do not disclose any specific information.

By blanking out everything but the title on the lease and renter's application the City is not able to determine if Mr. Williams has a viable lease and is screening his tenants. It is understood that a lease is written for an individual tenant and rental property, therefore making them slightly different. The City is not asking for detailed information, only the form that is used.

Alan Williams, property owner, stated he had received a citation for a tenant and because it was a citation from the City, he told the tenant she had 30 days to move out. In the meantime, he had sent a letter to the City asking why it was wrong for a person to put a sofa out with a free sign on it. He was told it was rescinded at that time. He stated because of the original letter sent by the City he had told his tenant she had to leave and she is now homeless. He stated he then received a letter from the City regarding his license. He stated he sent a blank copy of his lease as required by the Ordinance and the fact that the City could not read it was not relevant. He read from 12-916, item 3 of the Code. He asked for explanation for the appeal time process. He noted he only had seven days to appeal, not 20 days in the Code. He read from 12-902(5), item 2 of the Code. He stated his lease and application forms were intellectual property developed over 20 years and belonged to him. He stated the City was not a party to his transactions and therefore did not get the right to see his intellectual property. He stated he checked his tenants and they had all of the property business forms, which the City knew about. He stated the City had to prove lack of compliance rather than require a landlord to prove innocence. He stated 12-903(7) did not allow a handshake agreement between parties and therefore discriminated against people who did not believe in leases. He stated the State law only required leases for units of 12 or more and the State did not require copies of the lease. He stated they promise their tenants that they will respect their privacy, including information on the leases. He stated handing over his business documents to the competition was not right. He stated he was requesting a license. He stated he could not give the City a copy of the lease until he had a license and he cannot get a license until he had a lease. He noted this was a "catch 22" situation. He stated there were approximately 4,800 rental properties in the City and his documents consisted of 16 pages alone for each rental property he has. He stated a copy of the lease was just paper that the City did not need. He believed he was right and the City did not need the information. He stated if the Council did not allow him to obtain a license, he would need to take other legal steps.

Mayor Howe asked if Mr. Williams would give the City a blank lease. Mr. Williams noted none of his leases were standard and were all different. He noted he had told the City prior to the ordinance being adopted that he was not willing to share contractual details of his leases.

Councilmember Schulte stated he did not feel qualified to make a legal decision, but their legal staff had informed Council that they could see a blank lease and it was not intellectual property. He did not believe this was a decision that could be made tonight.

Mayor Howe asked if Mr. Williams would give the City a blank lease. Mr. Williams responded he was not willing to give out a blank lease because this was his intellectual property.

MOTION BY COUNCILMEMBER SIDOTI, SECONDED BY COUNCILMEMBER SCHULTE, TO UPHOLD STAFF'S DECISION TO DENY RENEWAL OF RENTAL LICENSE NO. 19531 FOR FAILURE TO PROVIDE FORM COPIES OF THE LEASE AND RENTERS APPLICATION REQUIRED BY CITY CODE CHAPTER 12-900.

Councilmember Schulte stated he did not doubt Mr. Williams' calculation of the number of leases in the City, but a lot of those leases were held by a couple of people and, therefore, there would not be many leases coming into the City. He believed the City would hold the information in confidence.

Councilmember Sanders noted Mr. Williams was with the Council through development of most of the rental licensing process and was very helpful. He stated he did not recall Mr. Williams bringing up this particular issue. He stated if Mr. Williams did not use a standard lease and if he changed each lease, this was intellectual property and he had a problem denying this based on his failure to provide a blank lease. He stated he was not going to vote to withhold his license. Mr. Williams stated he had brought this up and had sent an email to the City Attorney regarding his concerns also. He stated based on the fact that he had provided the City a blank document, he believed he should be provided a license for his property. He stated if this went to Court, it would take over six months and he would be demanding the loss of rent. He believed what he provided the City with was what was required under the Code.

Assistant City Attorney Brodie stated what Mr. Williams provided clearly was not what a blank document was. He stated the City was not allowed to disclose this type of data as public and therefore, there was built in protections for Mr. William's intellectual property. He believed the ordinance was correctly interpreted by staff.

Councilmember Schulte stated the City did not want to go to Court and Mr. Williams did not want to go to Court. He stated why didn't Mr. Williams go on the internet and just download a standard lease and give that to the City. Mr. Williams responded he could do that, but it was not the lease he used and he has provided the City with a blank lease.

Councilmember Johnson stated he understood that a blank document is a document without personal information included. He stated the purpose of a blank document was to get good people into the community and address problems. He asked why Mr. Williams would not cooperate with the City and work with them to see if this could be resolved amicably. He stated he would be voting in favor of the motion. Mr. Williams stated he was an honest person and understood where the Assistant City Attorney was coming from, but their interpretation of a blank document was different.

Mr. Brodie summarized what was required in a lease and a lease application. Mr. Williams asked how he could provide a lease when he did not have a license.

Mayor Howe asked if Mr. Williams was going to provide a lease without personal information. Mr.

Williams responded he could not.

THE MOTION PASSED 5-1, COUNCILMEMBER SANDERS OPPOSED.

13. CONSIDER APPROVAL OF SITE PLAN, 610 EXPRESS, INC., 430 COON RAPIDS BOULEVARD, PC 09-19

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Planner Harlicker presented a memorandum to Council stating 610 Express is requesting site plan approval to convert an existing car wash bay into a drive through food lane.

The site consists of a convenience store, gas canopy with 12 pumps, and an attached two bay car wash. The applicant is proposing to convert the car wash bay closest to the store into a drive through lane for in store food service. To better screen the stacking area for the car wash and the food lane, additional landscaping is being planted along Coon Rapids Boulevard. The landscaping has been improved so that it is in compliance with the current landscaping standards.

No one spoke at the October 15<sup>th</sup> Planning Commission public hearing. The Commission asked about the placement of the menu board. They added a condition that it be placed so it is not parallel to Coon Rapids Boulevard. They also discussed the architectural treatment of the inside of the drive-through lane. Since it was going to be visible from the outside, they added a condition that it be architecturally compatible with the exterior of the building. The landscape plan had been modified so the condition requiring the plan be amended to show additional trees was eliminated. The Commission unanimously recommended approval of the site plan.

MOTION BY COUNCILMEMBER SCHULTE, SECONDED BY COUNCILMEMBER SIDOTI, TO APPROVE THE SITE PLAN TO CONVERT AN EXISTING CAR WASH BAY INTO A DRIVE THROUGH FOOD LANE WITH THE FOLLOWING CONDITIONS:

1. COMPLIANCE WITH TITLE 11 OF THE CITY CODE.
2. ALL LANDSCAPED AREAS MUST BE IRRIGATED.
3. A CROSSWALK MUST BE PAINTED ACROSS THE DRIVE THROUGH LANES.
4. THE MENU BOARD SHALL NOT BE LOCATED SO THAT IT IS PARALLEL TO COON RAPIDS BOULEVARD
5. THE INSIDE OF THE DRIVE-THROUGH LANE MUST BE IMPROVED SO THAT IT IS ARCHITECTURALLY COMPATIBLE WITH THE EXTERIOR OF THE BUILDING.

THE MOTION PASSED UNANIMOUSLY.

14. CONSIDER APPROVAL OF PRELIMINARY AND FINAL PLAT, SPRINGROOK COMMERCIAL ADDITION (SHAMROCK DEVELOPMENT), COON RAPIDS



BOULEVARD AND SPRINGBROOK DRIVE, PC 08-20

Planner Harlicker presented a memorandum to Council stating Shamrock Development is requesting approval of a preliminary and final plat of Springbrook Commercial Addition. The applicant proposes to subdivide a 6.82 acre parcel into one lot and an outlot. Lot 1 will be 2.08 acres and Outlot A will be 4.74 acres. The parcel is currently undeveloped.

The size and dimensions of Lot 1 comply with the City's subdivision requirements. Both lots are currently vacant. Park dedication will be due for Lot 1 at the time of building permit application. Outlot A will have to be platted as a lot prior to development.

No one spoke at the October 15<sup>th</sup> Planning Commission meeting. The Commission discussed the impacts of the County's comment letter. The County is asking for additional right-of-way along Coon Rapids Boulevard. A total of 60 feet of right-of-way is needed south of the center line. An additional two feet will be required along most of the boulevard, an additional 10 feet will be needed near the intersection with Springbrook Drive. The plat and site plan can be adjusted to accommodate the additional right-of-way. The Commission unanimously recommended approval of the preliminary plat.

MOTION BY COUNCILMEMBER SCHULTE, SECONDED BY COUNCILMEMBER SIDOTI, TO APPROVE THE PRELIMINARY AND FINAL PLAT FOR SPRINGBROOK COMMERCIAL ADDITION BASED ON THE FINDINGS THAT THE PROPOSED PLAT COMPLIES WITH SECTIONS 11-2223 AND 11-2224, AND THE LOT DIMENSIONS MEET CITY REQUIREMENTS, WITH THE FOLLOWING CONDITIONS:

1. COMPLIANCE WITH TITLE 11, CITY CODE OF COON RAPIDS.
2. PARK DEDICATION FOR LOT 1 SHALL BE PAID AT THE TIME OF BUILDING PERMIT APPLICATION.
3. OUTLOT A WILL HAVE TO BE PLATTED PRIOR TO ITS DEVELOPMENT.
4. ALL COMMENTS FROM ANOKA COUNTY MUST BE ADDRESSED.
5. ALL COMMENTS FROM THE CITY ENGINEER MUST BE ADDRESSED.

THE MOTION PASSED UNANIMOUSLY.

15. CONSIDER SITE PLAN AND CONDITIONAL USE PERMIT, KWIK TRIP CONVENIENCE STORE, COON RAPIDS BOULEVARD AND SPRINGBROOK DRIVE, PC 09-17

Planner Harlicker presented a memorandum to Council stating Kwik Trip is requesting site plan approval and conditional use permit to construct a convenience store, gas canopy and a detached car wash.

The applicant is proposing to construct a 5,451 square foot convenience store, a gas canopy with 16 fueling positions and a detached two bay car wash. The applicant is designing the site and the building so that it can be LEED (Leadership in Energy and Environmental Design) certified. Design features such as LED lighting, green colored steel roof, and brick selection are intended help the project to be certified.

At the October 15<sup>th</sup> Planning Commission meeting, Jerry Teeson, representing the property owner Shamrock Development, spoke regarding access from Springbrook Drive. He stated the proposed locations for the right-in/right-out and the full access from Outlot A resulted from discussions between himself and the City Engineer.

The Commission had a lengthy discussion. Their questions and issues can be categorized into the following: Operational, Street Access and Site Plan/Building Design.

*Operational:*

The Commission asked about hours of operation, delivery schedules, and outdoor storage/display. Leah Berlin, representing Kwik Trip, said that the facility will be open 24 hours a day, seven days a week. Tentative delivery schedule will include daily delivery by a mid sized straight truck, gas deliveries every two or three days and semi truck delivery every two or three days. Proposed outside storage/display would include an ice machine on the south side of the store, a propane tank sales cage on the front near the southeast corner, and seasonal salt bags (water softener and snow melt salt) by the gas pumps. The Commission questioned if outdoor storage/display is allowed. Outdoor merchandise display is limited to within 4 feet of the building, maintaining at least a three foot wide open walkway and merchandise must be brought in between the hours of 12:01am and 5:00 a.m. Ms. Berlin also explained the fuel dispensing process. Even though there are more than 16 fuel dispensing locations, because of the way they area located under the canopy no more than 16 vehicles can be fueled simultaneously.

*Street Access:*

The Commission had concerns about the location of the proposed access from Springbrook Drive. The site plan shows a right-in and right-out access on Springbrook Drive from the Kwik Trip site and a shared full access to the south from Outlot A. The Commission questioned the placement and need of the proposed right-in/right-out. They thought it was too close to the Coon Rapids Boulevard/Springbrook Drive intersection and there would be conflicts with the cars waiting to make a left turn from Springbrook Drive on to Coon Rapids Boulevard. Enforcement of the no left turn would be difficult; it would be hard to prevent cars from making illegal left turns. The Commission also felt the two Springbrook Drive accesses were too close to each other resulting in conflicting turning movements. To eliminate potential conflicting turn movements and congestion on Springbrook Drive, the Commission would prefer no access to Springbrook Drive and direct all traffic to Holly Street NW. The proposed connection between Kwik Trip and the full access to the south was discussed. The access should be constructed at the same time as this project. The access should be paved with curb and gutter along the Springbrook Drive boulevard and bituminous curb along the interior edge of the drive way.

Ms. Berlin reviewed traffic data from other stores. Their stores do not tend to generate additional new traffic to an area. The majority of the traffic to their stores is vehicles already driving by. Very few of their customers come from outside the area and make a special trip to the store. Based on discussions with the City Engineer, Coon Rapids Boulevard and Springbrook Drive have adequate capacity to accommodate the traffic generated by this project. To control access, no driveway is proposed from Coon Rapids Boulevard; the site plan shows a right-in/right-out access on Springbrook Drive with future connection for cross easement access with property to the south. Full access from Outlot A can be provided to Springbrook Drive and to Holly Street NW allowing traffic from Kwik Trip to get back to northbound Springbrook Drive and northbound traffic from Springbrook Drive to enter the site. The right-in/right out is 180 feet from the Coon Rapids Boulevard/Springbrook Drive intersection and there is 120 feet between right-in/right out and the proposed full access to Springbrook Drive. The proposed right-in/right-out only access should be an acceptable safe traffic movement for this site.

The County has submitted an application to MnDOT for funding in 2013 and 2014 for improvements to the Coon Rapids Boulevard/Springbrook Drive intersection. The proposed improvements include two left turn lanes from northbound Springbrook Drive to westbound Coon Rapids Boulevard, a northbound through lane and a northbound right turn lane. The project is designed to improve traffic flow and decrease the frequency and severity of crashes occurring at the intersection.

*Site Plan/Building Design:*

The Commission discussed the fact that the landscape plan does not comply with the landscape ordinance. The plan is deficient in the number of overstory trees, shrubs and foundation plantings. The applicant indicated they would work with staff to revise the landscape plan so it is in compliance with the ordinance. The Commission also noted the proposed on site lighting was not consistent with the existing street lighting. They thought the on site lighting should be a similar style as the existing street lights.

The Commission was concerned about the orientation of the building and its relationship to Coon Rapids Boulevard. The Commission thought the front of the store should face Coon Rapids Boulevard. The code allows for the front entrance to not face the primary street provided architectural features and a focal point are included on the building elevation. The Commission believed the proposed architectural enhancements (the roof dormer, row of architectural windows, the arched gable and the visible front entrance) proposed for the side of the store was not sufficient to connect the building with Coon Rapids Boulevard. The Commission also thought the overall site layout, with the gas canopy near the intersection, was inappropriate given the prominence of the site. They believed the site should be redesigned so the store was closer to the intersection than the gas canopy. The Commission thought the internal traffic circulation was confusing and not intuitive. By reorienting the building and gas canopy, the internal traffic flow could be made to work better.

The site plan exceeds the number of required parking stalls. Seventeen spaces are required and 30 spaces are proposed. The site plan includes nine parking spaces that abut the Coon Rapids Boulevard side of the store. The Commission thought these spaces should be moved. The code allows parking to be located along the primary street provided no alternative is practical and it complies with certain

design criteria. The parking cannot exceed 60 feet in width with a single drive aisle and a row of parking on each side.

The Commission's discussion on the exterior building materials focused on the metal roof. The Commission liked the use of brick in the building, but did not believe the metal roof complied with the exterior building materials requirement. They thought a shingle roof would fit better with the neighborhood. The code includes a list of acceptable exterior building materials but is silent on roof materials. A car wash with a metal roof was approved in 2006 at the intersection of Coon Rapids Boulevard and Direct River Drive.

The Commission also noted the floor to area ratio (FAR) does not comply with the required ratio. The proposed building floor to area ratio is 0.6. This value is determined by dividing the total building area by the size of the parcel. The minimum FAR required is 0.6. Section 11-2813 allows for design flexibility. Design flexibility in the floor area ratio is reasonable because this type of use does not lend itself to this high of a ratio. This site is 2.08 acres; a 0.6 FAR would yield a 54,432 square foot building. In order to meet the required 0.6 FAR, the proposed 5,451 square foot convenience store would have to be constructed on a 9,085 square foot lot. This is not possible given the parking and open space requirements and area needed for the fuel pumps.

The Planning Commission unanimously recommended denial of the proposed site plan and conditional use permit.

The Kwik Trip representative summarized the project. He noted this would be the nicest store they had ever built and the site plan worked well on this site.

**MOTION BY COUNCILMEMBER SIDOTI, SECONDED BY COUNCILMEMBER JOHNSON, TO APPROVE THE PROPOSED SITE PLAN AND CONDITIONAL USE PERMIT, WITH THE FOLLOWING CONDITIONS:**

1. ADDITIONAL FOUNDATION SHRUBS MUST BE PLANTED ALONG THE SOUTH SIDE OF THE CARWASH AND THE NORTH AND EAST SIDE OF THE STORE TO COMPLY WITH THE LANDSCAPING REQUIREMENTS.
2. AN ADDITIONAL FIVE OVERSTORY TREES ARE REQUIRED ALONG COON RAPIDS BOULEVARD AND TWO ALONG SPRINGBROOK DRIVE.
3. FORTY-SEVEN SHRUBS MUST BE PLANTED IN THE OPEN AREAS AND A LANDSCAPED SCREEN MUST BE PLANTED BETWEEN THE BERMS ALONG SPRINGBROOK DRIVE.
4. THE DEVELOPER IS RESPONSIBLE FOR THE INSTALLATION OF A SIDEWALK ALONG COON RAPIDS BOULEVARD AND SPRINGBROOK DRIVE. A MINIMUM OF EIGHT FEET OF TURF BETWEEN SIDEWALK AND STREET MUST BE MAINTAINED, TAKING INTO ACCOUNT FUTURE WIDENING OF THE STREET.
5. SIDEWALK EASEMENTS WILL BE REQUIRED TO BE DEDICATED TO THE CITY IN AREAS WHERE THE SIDEWALK WILL NEED TO BE LOCATED ON THE SITE.

**UNAPPROVED**

6. THE OWNER IS TO SUBMIT A PETITION TO HAVE THE CITY INSTALL THE WATERMAIN AND ALLOW FOR FUTURE CITY MAINTENANCE BY DEDICATING PUBLIC UTILITY EASEMENT OVER THE WATERMAIN SYSTEM AREA ON THE SITE. THE WATERMAIN MUST PROVIDE FOR FUTURE EXTENSION TO SERVE THE FUTURE DEVELOPMENT TO THE SOUTH.
7. ALL LANDSCAPE AREAS MUST BE IRRIGATED.
8. ALONG COON RAPIDS BOULEVARD THE PROPOSED HONEYLOCUST TREES SHOULD BE REPLACED WITH MAPLES, HACKBERRYS OR OTHER SPECIES WITH A LESS DELICATE APPEARANCE.
9. CROSS ACCESS EASEMENTS ARE REQUIRED BETWEEN LOT 1, BLOCK 1 AND OUTLOT A.
10. THE CONNECTION BETWEEN KWIK TRIP AND THE FULL ACCESS TO THE SOUTH MUST BE CONSTRUCTED AT THE SAME TIME AS THE STORE. THE ACCESS MUST BE PAVED WITH CONCRETE CURB AND GUTTER ALONG SPRINGBROOK DRIVE AND BITUMINOUS CURBING ALONG THE INTERIOR EDGE.
11. COMPLIANCE WITH TITLE 11 OF THE CITY CODE.

Margaret Murphy, Planning Commission representative, stated they had a lot of discussion on this and most of their concerns were addressed in the denial. She stated the majority of the concerns were not the standards they had worked on for so long and hard in an effort to make the boulevard a special place and better gateway to the community. She stated it was strongly felt the entrance for the front of the buildings should face the boulevard with the parking restricted preferably to the back, or do the sides. She stated the gas pumps if they were put to the back of the building would still be highly visible. She stated they were concerned about ample and safe access for the pedestrians. She stated they did not like the idea of outdoor storage. She said they were hoping when a design element was in an area that it be continued consistently throughout the area and they did not receive a response that the lighting would match what was currently there. She stated they preferred it be the same type of lighting that was there now. She indicated they had an issue with the roofing materials and the color was different than what was shown. She stated they wanted distinct design themes for each port district and did not believe this fit what they had envisioned for this area. She stated they had issues with safety regarding vehicle access. She noted the second access was only 120 feet further than the first access, which appeared very close to the boulevard with the amount of traffic. She noted the County had already identified this particular intersection as a traffic hazard and there were hopes there would be extra lanes put in at some time in the distant future. She stated there was not a study done for the Coon Rapids location with respect to traffic counts.

Councilmember Sidoti stated this was the first LEED certified building in the City and felt that was very special. He stated this was a good move for the City. He noted one of the components of a LEED certified building was the metal roof. He stated with respect to the lighting, he did not like the current style of lighting. He noted the light bulbs did not match, they were hard to maintain, and he believed they were better served with the LED lighting. He stated he understood the Commission's concerns regarding the standards, but believed they needed to move forward.

Councilmember Sidoti stated he believed the applicant showed a great deal of ingenuity with respect to the orientation of the building. He stated sometimes they had to think in terms of the business aspect of everything. He noted the applicant knew how to operate their business and the last thing the City wanted was an empty building because the business could not survive.

Councilmember Johnson complimented the Commission for all of the work put into this review. He stated the problem could be the direction they received from Council. He stated he disagreed with every concern the Commission brought up and agreed with Councilmember Sidoti. He stated the business was designed to serve the public. He believed the access off of Springbrook was a good way to address the issue. He believed the orientation of the building was better towards Springbrook. He noted the orientation of the pumps to the front of the building was the way all gas stations were now. He stated the metal roof was the way everything was going. He believed the Commission was sometimes confined by what was there and the Council had not worked with the Commission well enough. He stated this was not a criticism of the Commission and he wanted the Council and the Commission to work together to resolve issues. He stated if the Commission felt they were being restricted, they had to let Council know.

Donna Naeve, Planning Commission Chair, stated they had tried to work with the developer and had been told the developer would not work with them and wanted a decision made. She stated for her the individual building was fine, but the location was the issue. She stated they were the last business to come into that section of the Port and she did not believe it was compatible. She recommended the roof be brown instead of bright green, even if it was metal. She stated they had recommended splitting the lot, but the developer did not want to do that. She stated the Commission did not try to keep people out, but they wanted businesses to be successful and stay in the community for a long time. She stated they did not like the idea of the "pork chop" median. She noted Springbrook was a very busy road and they were looking for a way to make this safer. She stated there were safety issues and believed there would be accidents there. She noted in Stillwater, this applicant had built a building to match the rest of the development and she did not know why the applicant would not do that now.

Councilmember Schulte believed one of the issues was that there were new technology and ideas in the past few years that the City had not looked at and he believed the City should look at these new technologies and design standards. Councilmember Schulte stated he liked the building and suggested the City look at making this building a standard for building design.

Jennifer Geisler, Planning Commissioner, stated the Commission was required to follow City Code and they did not have the leeway the Council did. She stated the frustration was that they were challenged to follow the vision the City had put forth and the Commission took that to heart. She stated it was difficult to follow the rules and every time the Commission did follow the rules, it came back to them. She believed it might be time to rewrite everything if Council wanted something different.

Mayor Howe stated most of the Planning Commission members did not want this type of business on this lot. Ms. Geisler stated the Commission had to look at the rules and if the plat met the rules, the

Commission had to approve the plat.

Mayor Howe stated the City should look at materials, lighting, etc. Mr. Geisler stated this was a nice building, but not at this location. She stated when the Commission tried to follow the rules, the Commission gave the Council things they did not like.

The Kwik Trip representative stated they would like a full access, but the easiest way to solve this was with a median in the road. He believed what their engineers had designed was appropriate. He did not see traffic as an issue.

Councilmember Sanders stated it was not productive to prolong the discussion with the Planning Commission. He stated he would like to see specifically what the violations were to the Code that would be a detriment to any projects in that area. He believed this was a good project. He stated the Commission had made their recommendation and the Council could take the recommendation or not. He stated he would vote for the project. He stated LED lighting was not even contemplated a few years ago and the Council needs to consider this.

Councilmember Schulte stated the Sustainability Commission could look at the Port standards to ensure the standards meet sustainable standards.

Ms. Naeve stated the Planning Commission believed foundation planters were the appropriate approach for this building. She stated outdoor storage of bags of salt by the pump area was not allowed by Code and the Council should address this. She noted the City Code allowed 16 dispensing hoses, but they had 18-20. She stated the Council might want to acknowledge that they were being allowed more hoses than permitted.

Councilmember Johnson stated the Planning Commission had never contacted him with respect to these types of issues and this was a frustration for him. He stated it appeared there were different charges and if the Council needed to change the Commission's charge, then Council needed to do that. He stated the miscommunication was what frustrated him.

Ms. Naeve stated one of the frustrations was that the Commission was subservient to the Council and if Council wanted to contact the Commission then they should contact the members. She stated if Council wanted her resignation they should let her know.

Ms. Geisler stated she felt disrespected every time the Commission came to the Council. She stated she also was willing to resign if necessary. She noted this was a volunteer position and maybe the Council did not want the Commission's help.

Mayor Howe stated the problem he had was allowing the commercial project. He stated the denials put in would not work on a commercial site and the Commission knew that. Ms. Geisler stated the assumption was that a gas station/convenience store was the only thing that would work in commercial, but a gas station was not intended to be put in that area.

Ms. Naeve stated the land was zoned commercial by the Council and the Commission was presented with a lot split and there were certain requirements that had to be met for a lot split. She stated there could be a project that would meet all of the standards. She stated traffic flow did not show a secondary access, so they had a legitimate issue with only a right-in/right-out. She stated there was a Code for landscaping, but for some reason people did not want to meet the Code. She believed the Code said no metal panels. She stated the Commission was not looking for things just because it was in a commercial area. She stated the Commission took this case and looked at it on its merits.

Councilmember Sidoti stated LEED certified buildings changed everything and believed building materials that were standard in certain areas might have to be changed because they were not LEED certified. He stated as the City went forward, it would be faced with these types of issues more and more and he believed everything would need to be changed. Councilmember Sidoti called the question.

Councilmember Schulte stated he did not feel the animosity toward the Planning Commission that he thinks they feel. He stated he understood why they had made their decisions and he agreed they were bound by the Code. While the Commission was not happy about what the Council was always doing, it was going to happen at times. He stated the Commission was doing good work.

Mayor Howe stated he did not agree to change this property to commercial property, but now that it was changed the project being proposed was a very good project. He believed this project would work.

Councilmember Sanders stated as a former Planning Commissioner he understood the Commission's frustration. He stated Council's decision did not have anything to do with the Commission personally. He stated the issue was that the Council had changed the rules but had not changed the Code.

MOTION BY COUNCILMEMBER SIDOTI, SECONDED BY COUNCILMEMBER SCHULTE, TO CALL THE QUESTION. THE MOTION PASSED UNANIMOUSLY.

THE ORIGINAL MOTION PASSED UNANIMOUSLY.

16. CONSIDER AMENDED RESOLUTION APPROVING PLANS AND SPECIFICATIONS AND ORDERING ADVERTISEMENT FOR BIDS, MAIN STREET TRAILWAY, ROUND LAKE BOULEVARD TO WEDGEWOOD DRIVE, PROJECT 06-48

Director of Public Services Gatlin presented a memorandum stating on September 15, 2009 the City Council adopted a resolution approving plans and specifications and ordering advertisement for bids for the Main Street trailway from Round Lake Boulevard to Wedgewood Drive. It was noted the plans had been submitted for final State and Federal approval. Also, major increases in the project were explained at that time.



Final plans for the Main Street railway project have now been submitted for final approval by State and Federal agencies. Kimley-Horn and Associates has finished its final cost estimate for the project of approximately \$630,000.

In their review, State and Federal agencies have suggested that it is necessary for the City to adopt an amended resolution. State and Federal agencies have not yet approved the final plans and the Federal grant funds have not been officially authorized pending final Federal approval. It is necessary for the resolution to be amended to make the advertisement for bids and the award of bids both contingent upon Federal approval and authorization of Federal funds for the project.

At this time the funding issue has not yet been resolved. Staff is continuing to work with Anoka County, MnDOT, and the City of Anoka to consider additional funding. It appears that the project is still approximately \$400,000 over the original grant amount based upon State and Federal requirements for improvements to the bridge and modifications to the original design.

If Council adopts the amended resolution and Federal funds are authorized, advertisement for bids would be in November, a bid opening on December 17, 2009, and award of bids on March 16, 2010 if additional funding sources were obtained.

As noted in the September 19, 2009, memo, additional funding of approximately \$400,000 would be necessary to supplement Federal AARA grant funds. If these funds are not secured, the project would either have to be abandoned or resubmitted in future years for grant funding.

Councilmember Schulte believed the City of Anoka should join in on this. Director of Public Services Gatlin responded Anoka could not spend state aid money outside of their City and while they would like to help, they have no resources at this point.

Mayor Howe stated originally the Council thought this would be covered by a grant and he did not want to spend any funds on this.

Councilmember Schulte believed they should obtain the bids.

MOTION BY COUNCILMEMBER SCHULTE, SECONDED BY COUNCILMEMBER SIDOTI, TO ADOPT THE AMENDED RESOLUTION APPROVING PLANS AND SPECIFICATIONS AND ORDERING ADVERTISEMENT FOR BIDS, MAIN STREET TRAILWAY, ROUND LAKE BOULEVARD TO WEDGEWOOD DRIVE, PROJECT 06-48. THE MOTION PASSED UNANIMOUSLY.

Councilmember Sanders asked if the City would get any realistic bids knowing that based on this discussion the City would likely not do this project because of lack of funding. Director of Public Services Gatlin stated the funding sources would not get disclosed and he believed there would be realistic bids received.

17. CONSIDER AMENDMENT TO 2008 CDGB AMENDMENT WITH ANOKA COUNTY TO  
INCLUDE COMMUNITY DEVELOPMENT BLOCK GRANT – RECOVERY  
ALLOCATION

Housing and Zoning Coordinator Bennett presented a memorandum to Council stating the City Council is asked to consider an amendment to the 2008 Community Development Block Grant (CDBG) Agreement with Anoka County to include additional funds allocated to the City by the federal government through the American Recovery and Reinvestment Act of 2009 (Recovery Act). Funds were awarded under the Community Development Block Grant – Recovery (CDBG-R) program administered by the U.S. Department of Housing and Urban Development (HUD).

The City has been awarded \$81,709 in CDBG-R funding. In May of this year, Council received staff's proposal to use these funds for energy conservation improvements at Fire Station 1 and allowed staff to proceed with the development of that proposal. The project includes roof repair, insulation of sleeping quarters, installation of efficient outdoor lighting and energy efficiency and control improvements to the heating, ventilation and air conditioning system. The estimated cost of the project is \$93,450. It must be completed by June 30, 2010, in order for the county to completely draw down funds from HUD by the September 30, 2010, CDBG-R program deadline.

The City receives CDBG funds through a Joint Cooperation Agreement with Anoka County. This amendment to the program year 2008 CDBG Agreement authorizes the administration of the CDBG-R funds through that agreement. The county is not requesting any additional administrative fees for this service.

The projected cost of the rehabilitation to Fire Station 1 exceeds the CDBG-R award, however, the remaining funds will be provided through a \$562,700 Energy Efficiency and Conservation Block Grant the City was awarded earlier this year from the U.S. Department of Energy. There will be no impact to the City Budget.

MOTION BY COUNCILMEMBER SCHULTE, SECONDED BY COUNCILMEMBER SANDERS, TO AUTHORIZE THE MAYOR AND CITY MANAGER TO ENTER INTO AN AGREEMENT AMENDING THE 2008 COMMUNITY DEVELOPMENT BLOCK GRANT AGREEMENT, AS WELL AS ANY OTHER NECESSARY DOCUMENTS, WITH THE COUNTY OF ANOKA FOR THE ADMINISTRATION OF THE COMMUNITY DEVELOPMENT BLOCK GRANT – RECOVERY FUNDS. THE MOTION PASSED UNANIMOUSLY.

18. CONSIDER RESOLUTION 09-101 AMENDING BUDGETS TO TAX INCREMENT  
DISTRICTS 1-2 AND 1-3

Finance Director Legg presented a memorandum to Council stating the City Council is requested to modify the budget for two tax increment districts.

Tax Increment Districts 1-2 and 1-3 are expiring at the end of 2009. The present budgets for the districts were modified in 2001 as part the modification of the entire project area. At this time, the budgets for these two districts should be modified to reflect historical expenditures as well as allowing for available tax increment to be used in the street reconstruction in the project area. Because the budgets for these two districts are not increasing, but only being reallocated, no public hearing will be necessary.

It was noted an amended resolution was provided in the hand out.

MOTION BY COUNCILMEMBER LARSON, SECONDED BY COUNCILMEMBER SIDOTI, TO ADOPT RESOLUTION 09-101(A) AMENDING BUDGETS OF TAX INCREMENT DISTRICT S 1-2 AND 1-3. THE MOTION PASSED UNANIMOUSLY.

19. A. CONSIDER INTRODUCTION OF ORDINANCE RESTRICING PARKING ON BOTH SIDES OF MAIN STREET FROM THRUSH STREET NW TO AVOCET STREET NW
  - B. CONSIDER RESOLUTION 09-102 RELATING TO PARKING RESTRICTIONS ON MAIN STREET FROM THRUSH STREET NW TO AVOCET STREET NW
- 

City Engineer Vierzba presented a memorandum to Council stating Anoka County is planning to improve Main Street in 2010 between Thrush Street NW and Avocet Street NW. Parking of vehicles must be prohibited as part of the project approval process. Council is requested to introduce an ordinance and adopt a resolution restricting parking on Main Street.

The resolution is needed by the County in order to obtain Federal and State approval for the project that will be partially paid for with Federal and State funds. The ordinance is needed by the City in order to enforce the parking restriction.

Hearing no objections, Mayor Howe declared the ordinance to have been introduced.

MOTION BY COUNCILMEMBER SCHULTE, SECONDED BY COUNCILMEMBER SIDOTI, TO ADOPT RESOLUTION 09-102 RELATING TO PARKING RESTRICTIONS ON MAIN STREET FROM THRUSH STREET NW TO AVOCET STREET NW. THE MOTION PASSED UNANIMOUSLY.

20. CONSIDER INTRODUCTION OF ORDINANCE REPEALING ORDINANCE NO. 1036 AND ESTABLISHING STOP SIGNS ON EASTBOUND AND WESTBOUND 98<sup>TH</sup> LANE NW AND BLUEBIRD STREET NW
- 

Director of Public Services Gatlin presented a memorandum to Council stating Milt Peters appeared at Open Mic on October 6, 2009 and offered comments based on staff's review and report on his September 15, 2009, Open Mic request for additional stop signs at the intersection of 98<sup>th</sup> Lane NW

and Bluebird Street NW. Mr. Peters suggested that in lieu of a four-way stop, the City should consider removing stop signs on Bluebird Street NW and installing stop signs on 98<sup>th</sup> Lane NW instead.

Council discussed the issue in detail. It was first suggested that consideration may be given to a four-way stop to avoid confusion. In final deliberations the matter was referred to the Safety Commission for review and comment and to the Traffic Review Committee for additional comments.

At its October 8<sup>th</sup> meeting, the Safety Commission reviewed the request and recommended the stop signs be removed on Bluebird Street NW and new stop signs be installed on 98<sup>th</sup> Lane NW stopping traffic in the east and west directions. The Safety Commission felt that a four-way stop was not warranted and should not be considered.

The Traffic Review Committee also reviewed this matter again. The Traffic Review Committee stands by its earlier recommendation to remove the stop signs on Bluebird Street NW and install new stop signs stopping traffic on 98<sup>th</sup> Lane NW in the east and west directions. Detailed traffic counts in the area were not done; however, based on staff review, 98<sup>th</sup> Lane NW carries significantly higher traffic volumes than Bluebird Street NW. The goal of the neighborhood was to provide a break in traffic for the section of 98<sup>th</sup> Lane NW which serves as a bypass for traffic on Coon Rapids Boulevard. The recommended stop signs on 98<sup>th</sup> Lane NW will provide the desired result for the neighborhood.

To facilitate the request it is necessary to repeal the ordinance establishing stop signs on Bluebird Street NW at 98<sup>th</sup> Lane NW and introduce an ordinance establishing stop signs on 98<sup>th</sup> Lane NW at Bluebird Street NW.

This request has no major budget impact other than initial installation costs.

Hearing no objections, Mayor Howe declared the ordinance to have been introduced.

## 21. OTHER COUNCIL BUSINESS

### A. SCHULTE RE: STRUCTURE AT 115<sup>TH</sup>/116<sup>TH</sup> AND PHEASANT RIDGE DRIVE

---

Neighborhood Coordinator DeGrande presented a memorandum to Council stating Councilmember Schulte noted during the October 20, 2009, Council meeting there was a wooden structure on the boulevard between 115<sup>th</sup> and 116<sup>th</sup> Avenues and Pheasant Ridge Drive.

That evening a police officer investigated the wooden structure and noted it had been there for several weeks if not longer. The officer filed a police report and contact was made with the property owner the following day that the structure must be removed from the boulevard. It was found that the property owner had constructed this structure and has been using it for trash collection. Police then sent an e-mail to Code Enforcement letting them know that a police report had been filed and that follow up with the property owner was needed to ensure that the item was removed from the

boulevard.

22. CONSIDER TENTATIVE AGENDA OF NOVEMBER 17, 2009

The tentative agenda was received.

23. ADJOURN

MOTION BY COUNCILMEMBER SANDERS, SECONDED BY COUNCILMEMBER SIDOTI,  
TO ADJOURN THE MEETING AT 10:10 P.M. THE MOTION PASSED UNANIMOUSLY.

Respectfully submitted,

Kathy Altman  
TimeSaver Offsite Secretarial





TO: Mayor, City Councilmembers, *[Signature]*  
City Manager

FROM: Stoney L. Hiljus *SH*  
City Attorney

SUBJECT: Approve Encroachment  
Agreement - Allan K. Butler and  
Donna V. Butler - Project 03-15

DATE: November 17, 2009

### INTRODUCTION

The Council is asked to approve the Encroachment Agreement from Allan K. Butler and Donna V. Butler for right-of-way purposes over portions of their property located at 95<sup>th</sup> Lane and East River Road.

### DISCUSSION

The Engineering Department has found that when Project 03-15 was completed no temporary street easement was taken for a temporary cul-de-sac constructed within Amana First Addition over portions of three lots owned by the Butlers. The temporary situation was allowed by the City so that the neighboring property would not be affected by the Butler development. It is in the City's best interest to enter into an encroachment agreement at this time. The encroachment will cease to exist when the adjacent property is developed and 95<sup>th</sup> Lane is constructed within the permanent right-of-way as shown on the plat of Amana First Addition.

### ACTION REQUESTED

Council is asked to approve the Encroachment Agreement from Allan K. Butler and Donna V. Butler for right-of way over portions of their property at 95<sup>th</sup> and East River Road.

Attach.

## ENCROACHMENT AGREEMENT

THIS AGREEMENT made and entered into this \_\_\_\_ day of \_\_\_\_\_, by and between Allan K. Butler and Donna V. Butler, husband and wife, hereinafter referred to as "Landowner" and the City of Coon Rapids, a Minnesota municipal corporation, hereinafter referred to as "City."

### WITNESSETH:

Landowner is the owner of property located in the City and legally described as Lots 1, 2, and 3, Amana First Addition, Anoka County, Minnesota (the "Property") and hereby consent to the temporary encroachment onto its property of the following described street:

A temporary encroachment for street purposes over, under and across Lots 1, 2, and 3, Block 1, Amana First Addition, according to the recorded plat thereof, Anoka County, Minnesota. Said encroachment is described as that part of said Lots 1, 2, and 3 lying within the circumference of a 42.50 foot radius circle, the center point of said circle being described as follows:

Commencing at the Northeast corner said Amana First Addition;  
thence North 89 degrees, 23 minutes, 34 seconds West, along the  
North line of said Amana First Addition, a distance of 165.64 feet;  
thence South 0 degrees, 36 minutes, 26 seconds West a distance of  
42.50 feet to said center point.

NOW, THEREFORE, in consideration of the mutual covenants, understandings, and obligations contained herein the parties hereto agree as follows:

1. Temporary encroachment may continue to exist until the City completes construction of a new, permanent cul-de-sac within the right of way of 95<sup>th</sup> Lane as shown on the plat of Amana First Addition. The pavement that is located within the encroachment area will be removed by the City at that time at City's expense. It is understood by the parties that the encroachment will cease to exist when the adjacent property is developed and 95<sup>th</sup> Lane is constructed within permanent right of way.
2. City will not further enlarge or extend in any manner into the encroachment area.
3. City hereby agrees that should it be necessary to remove any of the bituminous street in order to repair, replace, or maintain, it will be at the expense of the City. The City will have the sole responsibility for any maintenance or repair.
4. Upon the completion of any construction, maintenance, or replacement project, the City will restore any disturbed areas including, but not limited to, the replacement of any damaged sod and plantings



5. Landowner agrees that the City's employees, agents, and successors in interest shall have access to the encroachment area at all times.

6. The City agrees to indemnify and hold the Landowner harmless from damages or claims resulting directly and solely from the use of the encroachment area. This indemnification, however, shall not include and the City shall not be responsible for any and all costs, expenses, damages, demands, obligations, including penalties and reasonable attorney's fees, and losses resulting from any claims, actions, suits, or proceedings based upon a release or threat of release of any hazardous substances, pollutants, or contaminants which may have existed on, or which relate to, the property prior to the date hereof and which were not caused by the City.

7. This Agreement may be enforced by either party in any court of competent jurisdiction or by any other process mutually agreed to by the parties.

8. This Agreement will be binding upon the parties hereto, their heirs, successors, or assigns.

The parties hereto have executed this Agreement, and this Agreement will be effective, as of the day and year first above written notwithstanding the actual date any signatures were attached.

BY CITY:

CITY OF COON RAPIDS

By: \_\_\_\_\_  
Tim Howe, Mayor

By: \_\_\_\_\_  
Matthew S. Fulton, City Manager

BY LANDOWNER:

\_\_\_\_\_  
By: \_\_\_\_\_  
Allan K. Butler

\_\_\_\_\_  
By: \_\_\_\_\_  
Donna V. Butler





**TO:** Mayor, City Councilmembers, City Manager *MSH*  
**FROM:** Stoney Hiljus, City Attorney *SH*  
**DATE:** November 17, 2009  
**SUBJECT:** Accept Trail Easement and  
Conveyance of Outlot D, Crescent  
Ponds 4<sup>th</sup> Addition for Park Purposes

### INTRODUCTION

The Council is asked to accept a trail easement and warranty deed for park purposes from Signature Ventures, LLC over portions of their property located at Main Street and University Avenue and Outlot D, Crescent Ponds 4<sup>th</sup> Addition.

### DISCUSSION

Conditions of plat approval for Crescent Ponds 4<sup>th</sup> Addition included the dedication of a trail easement and conveyance of Outlot D for park dedication.

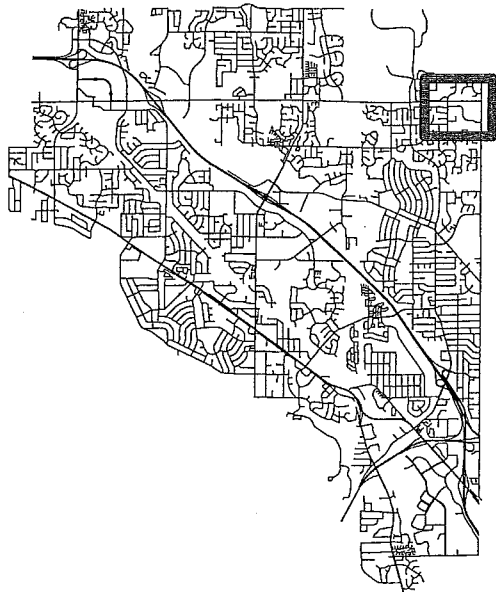
Council is asked to accept an easement for trail purposes over all of Outlot A, Crescent Ponds Fourth Addition. Due to the difficult layout of the land, a more concise 15 foot wide legal description for the easement will be determined once construction of the trail is completed. When completed, the trail will run along Main Street from Foley Boulevard to University Avenue and connect to 124<sup>th</sup> Lane between Outlot B and Outlot C as indicated on the attached map.

Signature Ventures originally planned for a private park within Crescent Ponds Fourth Addition. However, during the discussion of the preliminary plat, Council expressed concerns of preventing residents that do not live in the subdivision from using the private park. Council directed staff to work with the developer and explore the possibility a public park. Signature Ventures has granted to the City for acceptance a warranty deed for Outlot D, Crescent Ponds 4<sup>th</sup> Addition to be used for public park purposes.

Both the easement and the deed are granted at no cost to the City.

### ACTION REQUESTED

Accept the attached trail easement and warranty deed from Signature Ventures, LLC to fulfill conditions of plat approval for Crescent Ponds 4<sup>th</sup> Addition.



## EASEMENT AGREEMENT

This Easement Agreement (the "Agreement") is made this \_\_\_\_ day of \_\_\_\_\_, 2009, by Signature Ventures, LLC, a Minnesota limited liability company, as "Grantor", in favor of City of Coon Rapids, a Minnesota municipal corporation and body politic, as "Grantee".

### RECITALS

WHEREAS, Grantor is the sole owner of certain real property located in the County of Anoka, State of Minnesota, and legally described in Exhibit A, attached hereto and made part of this document by reference (the "Easement Area");

WHEREAS, Grantor has authorized that a permanent easement for public trail purposes be granted over, upon and across the Easement Area; and

WHEREAS, Grantor and Grantee wish to provide for the future confinement of the Easement Area to a strip of land 15 feet wide, the exact legal description of which shall be determined after said public trail has been constructed (the "Limited Easement Area").

### AGREEMENT

THEREFORE, in consideration of the foregoing, the covenants and agreements contained herein, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor and Grantee, for themselves, and their successors and assigns, do hereby agree as follows:

1. Incorporated. The above RECITALS are hereby incorporated as a material part of this First Amendment with the same force and effect as if restated in full in this Paragraph.

2. Easement. Grantor does hereby grant to Grantee, its successors and assigns, a permanent easement for public trail purposes over, upon and across the Easement Area, including the rights of Grantee, its contractors, agents, servants, and assigns, to enter upon said Easement Area at all reasonable times to construct, reconstruct, inspect, repair, and maintain a public trail over, across, on, under, and through the Easement Area (hereinafter, the "Trail"), together with the right to grade, level, fill, and excavate the Easement Area, and the further right to remove trees, bushes, undergrowth, and other obstructions interfering with the construction,

expense, subject to Grantees' obligation to confine the Easement Area in the future to the Limited Easement Area pursuant to the terms hereof.

3. Limited Easement Area Description. Grantee does hereby agree to provide Grantor with an as built, written legal description of the centerline of the Limited Easement Area (the "Centerline Description") within 30 days of completion of the initial construction of the Trail or within 12 months of the effective date of this Agreement.

4. Easement Amendment. Grantor and Grantee hereby agree to execute an amendment to this Agreement in a form substantially the same as the Amendment to Easement, attached hereto as Exhibit B and made a part hereof by this reference, within 30 days of receipt of the Centerline Description.

5. Installation of Sidewalk; Trail. The Grantor shall be responsible for installing all sidewalks within the development. Grantor shall be responsible for installing the trail adjacent to Main Street and the Grantee shall install the trail connection from the sidewalk to the trail adjacent to Main Street.

6. Law. This Agreement shall be construed in accordance with the laws of the State of Minnesota. The easement and restrictions established herein shall run with the land and shall be binding upon of the owners of the Easement Area, and their successors and assigns and inure to the benefit of the Grantee, its successors and or assigns.

7. Authority. The undersigned represent and certify that they are duly authorized and fully empowered to execute and deliver this Agreement.

8. Counterparts. This Agreement may be executed in any number of counterparts, each such counterpart shall be deemed to be an original instrument and all such counterparts together shall constitute a fully executed Agreement.

9. Headings. The headings used in this Agreement are used for convenience only and shall not affect the meaning or interpretation of this Agreement or any provision or paragraph of this Agreement.

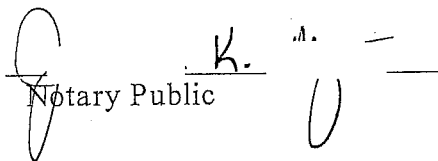
10. Effective Date. This Agreement shall be effective as of the date last signed by Grantor and Grantee.

*[The remainder of this page is purposely blank. Signature pages follow.]*

36

By: Todd J. Baumgartner  
Its: General Manager

The foregoing instrument was acknowledged before me this 22<sup>nd</sup> day of September, 2009, by Todd J. Baumgartner, the General Manager of Signature Ventures, LLC, a Minnesota limited liability company, on behalf of said entity.



IN WITNESS WHEREOF, Grantee has caused this Agreement to be executed as of this  
\_\_\_\_ day of \_\_\_\_\_, 2009.

THE CITY OF COON RAPIDS,  
a Minnesota municipal corporation and body politic

By: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF MINNESOTA            )  
  )ss.  
COUNTY OF \_\_\_\_\_)

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
2009, by \_\_\_\_\_, the \_\_\_\_\_ of the City of Coon Rapids, a  
Minnesota municipal corporation and body politic, on behalf of said entity.

\_\_\_\_\_  
Notary Public

This instrument was drafted by:  
WILKERSON & HEGNA PLLP (GCW)  
7300 Metro Boulevard, Suite 300  
Edina, Minnesota 55439  
(952) 897-1707

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**EXHIBIT A**  
**Legal Description of the Easement Area**

Outlot A, Crescent Ponds Fourth Addition, Anoka County, Minnesota.

**EXHIBIT B**  
**Amendment to Easement Agreement**  
**(attached)**

## AMENDMENT TO EASEMENT

This Amendment to Easement (the "Amendment"), made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between Signature Ventures, LLC, a Minnesota limited liability company, as "Grantor" and the City of Coon Rapids, a Minnesota municipal corporation and body politic, as "Grantee" (Grantor and Grantee may be referred to herein, collectively, as the "Parties" or individually, as a "Party").

## RECITALS

WHEREAS, the Parties previously entered into an Easement Agreement (the "Agreement"), a copy of which is attached hereto as Exhibit A and made a part hereof by this reference; and

WHEREAS, the Parties, pursuant to the terms of the Agreement, wish to define the centerline of the Trail (as that term is defined in the Agreement) and to limit the Easement Area to 15 feet on either side of said centerline.

## AGREEMENT

NOW, THEREFORE, the Parties, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby agree that the Agreement shall be amended and restated as follows:

1. Incorporated. The above RECITALS are hereby incorporated as a material part of this Amendment with the same force and effect as if restated in full in this Paragraph.
2. Priority. This Amendment hereby amends the Agreement and, in the event of conflict between them, this Amendment shall control. The terms and conditions of the Agreement remain in full force and effect unless expressly modified by this Amendment.
3. Limited Easement Area. The legal description of the Easement Area (as that term is defined in the Agreement) is hereby modified and limited to 15 feet on either side of the centerline defined on Exhibit B, attached hereto and made a part hereof by this reference, (the "Limited Easement Area").

4. Governing Law. This Amendment shall be governed by and construed in accordance with the laws of the State of Minnesota. This Amendment shall be binding upon and shall inure to the benefit of the Parties hereto and their successors and assigns.

5. Authority. The undersigned represent and certify that they are duly authorized and fully empowered to execute and deliver this Amendment.

6. Counterparts. This Amendment may be executed in any number of counterparts, each such counterpart shall be deemed to be an original instrument and all such counterparts together shall constitute a fully executed Amendment.

7. Headings. The headings used in this Amendment are for convenience only and shall not affect the meaning or interpretation of the Amendment or any provision or paragraph thereof.

8. Ratification. Except as modified herein, all terms and conditions of the agreements related to the Agreement are in full force and effect.

9. Effective Date. This Agreement shall be effective as of the date last signed by Grantor and Grantee.

*[The remainder of this page is purposely blank. Signature pages follow.]*

36

IN WITNESS WHEREOF, Grantor has caused this Amendment to be executed as of this day of 20\_\_.

SIGNATURE VENTURES, LLC, --  
a Minnesota limited liability company

By: \_\_\_\_\_  
Todd J. Baumgartner  
Its: General Manager

STATE OF MINNESOTA )  
 )ss.  
COUNTY OF HENNEPIN )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by Todd J. Baumgartner, the General Manager of Signature Ventures, LLC, a Minnesota limited liability company, on behalf of said entity.

\_\_\_\_\_  
Notary Public

IN WITNESS WHEREOF, Grantee has caused this Amendment to be executed as of this day of 20\_\_.

**The City of Coon Rapids,**  
a Minnesota municipal corporation and body politic

By: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF MINNESOTA            )  
  )ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2007, by \_\_\_\_\_, the \_\_\_\_\_ of the City of Coon Rapids, a Minnesota municipal corporation and body politic, on behalf of said entity.

\_\_\_\_\_  
Notary Public

36

EXHIBIT A

The Easement Agreement  
(attached)

**EXHIBIT B**  
**Legal Description of the Centerline Description  
of the Limited Easement Area**



36

(Top 3 inches reserved for recording data)

WARRANTY DEED

Limited Liability Company  
to Municipal Corporation

DEED TAX DUE: \$ \_\_\_\_\_

DATE: October 29, 2009

FOR VALUABLE CONSIDERATION, Signature Ventures, LLC, a limited liability company under the laws of the State of Minnesota, "Grantor", hereby conveys and warrants to the City of Coon Rapids, a Minnesota municipal corporation and body politic, "Grantee", real property in Anoka County, Minnesota, legally described as follows:

Outlot D, Crescent Ponds Fourth Addition

Check here if all or part of the described real property is Registered (Torrens) [ ]

together with all hereditaments and appurtenances, subject to the following exceptions:

1. All assessments and taxes due and payable hereafter.
2. Reservation of all minerals and mineral rights in favor of the State of Minnesota, if any.
3. All easements, reservations, and restrictions of record, if any.

Total consideration is less than \$500.00.

Check applicable box:

- [X] The Grantor certifies that the Grantor does not know of any wells on the described real property.  
[ ] A well disclosure certificate accompanies this document.  
[ ] I am familiar with the property described in this instrument and I certify that the status and number of wells on the described real property have not changed since the last previously filed well disclosure certificate.

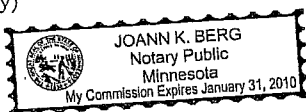
SIGNATURE VENTURES, LLC,  
A MINNESOTA LIMITED LIABILITY COMPANY

By: Todd J. Baumgartner  
Its: Chief Manager

State of Minnesota )  
ss.)  
County of Hennepin )

This instrument was acknowledged before me on this 29<sup>th</sup> day of October 2009 by Todd J. Baumgartner, the Chief Manager of Signature Ventures, LLC, a Minnesota limited liability company, on behalf of said entity.

(Seal, if any)



THIS INSTRUMENT WAS DRAFTED BY:

WILKERSON & HEGNA, P.L.L.P.  
7300 Metro Blvd, Suite 300  
Edina, MN 55439

TAX STATEMENTS FOR THE REAL  
PROPERTY DESCRIBED IN THIS  
INSTRUMENT SHOULD BE SENT TO:

City of Coon Rapids





TO: Mayor, City Councilmembers, City Manager *MP*  
FROM: Captain Cary Parks, Police Dept. *CP*  
SUBJECT: DWI Task Force Grant, 2009 - 2010  
DATE: November 17, 2009

### **INTRODUCTION**

The Coon Rapids Police Department has been awarded a grant from the Minnesota Department of Public Safety, Office of Traffic Safety to participate in the Anoka County DWI Task Force, utilizing funds through their Operation NightCAP program. The participation period is from October 1, 2009 through September 30, 2010; and the total amount of the grant is \$26,950.00.

### **DISCUSSION**

The Anoka County DWI Task Force involves all law enforcement agencies in Anoka County and the Minnesota State Patrol collaborating on various DWI saturation patrols throughout the Anoka County area to interdict and arrest drunk drivers during the grant period. These funds are used to pay overtime for Coon Rapids police officers to work these events.

### **BUDGET IMPACT**

Operation NightCAP traffic enforcement operations are paid through overtime to police officers. The City will receive \$26,950.00 for overtime reimbursement from the grant.

### **RECOMMENDATION**

Staff recommends that the City Council adopt Resolution 09-107, accepting the grant from the Minnesota Department of Public Safety, Office of Traffic Safety; and authorize the Chief of Police or his designee to administer and act as the fiscal agent for the grant fund.

## STATE OF MINNESOTA GRANT CONTRACT

This grant contract is between the State of Minnesota, acting through its Commissioner of Public Safety, State Patrol Division, 444 Cedar Street Suite 130, St. Paul, MN 55101-5130 ("State") and the City of Coon Rapids, Police Department, 11155 Robinson Drive, Coon Rapids, MN 55433 ("Grantee").

### Recitals

- 1 Under Minn. Stat. § 299A.01, Subd 2 (4) the State is empowered to enter into this grant contract.
- 2 Federal funds for this grant contract are provided from U.S. Department of Transportation's State and Community Highway Safety Program, Catalog of Federal Domestic Assistance (CFDA) Number 20.608.
- 3 The State is in need of coordinated impaired driving enforcement saturations and public information activities.
- 4 The Grantee represents that it is duly qualified and agrees to perform all services described in this grant contract to the satisfaction of the State.

### Grant Contract

#### 1 Term of Grant Contract

- 1.1 **Effective date:** October 1, 2009, or the date the State obtains all required signatures under Minnesota Statutes Section 16C.05, subdivision 2, whichever is later. Once this grant contract is fully executed, the Grantee may claim reimbursement for expenditures incurred pursuant to Clause 4.2 of this grant contract. Reimbursements will only be made for those expenditures made according to the terms of this grant contract.
- 1.2 **Expiration date:** September 30, 2010, or until all obligations have been satisfactorily fulfilled, whichever occurs first.
- 1.3 **Survival of Terms.** The following clauses survive the expiration or cancellation of this grant contract: 8. Liability; 9. State Audits; 10. Government Data Practices; 12. Publicity and Endorsement; 13. Governing Law, Jurisdiction, and Venue; and 15. Data Disclosure.

#### 2 Grantee's Duties

The Grantee, who is not a state employee, will:

Perform the duties and tasks specified in the NightCAP Grant Program Duties, Exhibit A, which is attached and incorporated into this grant contract.

Grantee will comply with the Single Audit Act Amendments of 1996 and Office of Management and Budget Circular A-133. Federal Audit Requirements is attached and incorporated and made part of this grant contract. See Exhibit B.

#### 3 Time

The Grantee must comply with all the time requirements described in this grant contract. In the performance of this grant contract, time is of the essence.

#### 4 Consideration and Payment

4.1 **Consideration.** The State will pay for all services performed by the Grantee under this grant contract as follows:

- (1) **Compensation.** The Grantee will be reimbursed an amount not to exceed \$26,950.00 for officer overtime rates, including fringe benefits, incurred in providing services pursuant to Clause 2 of this grant contract. Invoices for reimbursement must be submitted using the Operation NightCAP Invoice. All invoices for reimbursement must be supported by written documentation.
- (2) **Travel Expenses.** Reimbursement for travel and subsistence expenses actually and necessarily incurred by the Grantee as a result of this grant contract will be paid in the same manner and in no greater amount than provided in the current "Commissioner's Plan" promulgated by the commissioner of Employee Relations which is incorporated into this grant contract by reference. The Grantee will not be reimbursed for travel and subsistence expenses incurred outside Minnesota unless it has received the State's prior written approval for out of state travel. Minnesota will be considered the home state for determining whether travel is out of state.

No reimbursement shall be made for salary costs incurred in traveling to and from saturation events.

- 3c
- (3) **Matching Requirements.** (If Applicable.) Grantee certifies that the following matching requirement, for the grant contract, will be met by the Grantee: \$0.00.
  - (4) **Total Obligation.** The total obligation of the State for all compensation and reimbursements to the Grantee under this grant contract will not exceed \$26,950.00.

#### 4.2 Payment

- (1) **Invoices.** The State will promptly pay the Grantee after the Grantee presents an itemized invoice for the services actually performed and the State's Authorized Representative accepts the invoiced services. Invoices must be submitted timely and according to the following schedule:  
Itemized invoices will be submitted within 30 days after each saturation event to the State's Authorized Representative.

Final invoice pertaining to the first state fiscal year of this grant contract must be received by July 31, 2010. Reimbursements from the second state fiscal year may commence on or after July 1, 2010. The final invoice pertaining to the second state fiscal year of this grant contract must be received by October 31, 2010.

Expenditures for each state fiscal year of this grant contract must be for services performed within applicable state fiscal years. Every state fiscal year begins on July 1 and ends on June 30.

- (2) **Federal funds.** (Where applicable, if blank this section does not apply) Payments under this grant contract will be made from federal funds obtained by the State through Title 23 CFDA number 20.608 of the State and Community Highway Safety Act of 1966. The Grantee is responsible for compliance with all federal requirements imposed on these funds and accepts full financial responsibility for any requirements imposed by the Grantee's failure to comply with federal requirements.

#### 5 Conditions of Payment

All services provided by the Grantee under this grant contract must be performed to the State's satisfaction, as determined at the sole discretion of the State's Authorized Representative and in accordance with all applicable federal, state, and local laws, ordinances, rules, and regulations. The Grantee will not receive payment for work found by the State to be unsatisfactory or performed in violation of federal, state, or local law.

#### 6 Authorized Representative

The State's Authorized Representative is Lt. Paul Van Voorhis, 2005 North Lilac Drive, Golden Valley, MN 55422, (763)591-4698, or his/her successor, and has the responsibility to monitor the Grantee's performance and the authority to accept the services provided under this grant contract. If the services are satisfactory, the State's Authorized Representative will certify acceptance on each invoice submitted for payment.

The Grantee's Authorized Representative is Sgt. Jon Urquhart, 11155 Robinson Drive, Coon Rapids, MN 55433, (763)767-6487. If the Grantee's Authorized Representative changes at any time during this grant contract, the Grantee must immediately notify the State.

#### 7 Assignment, Amendments, Waiver, and Grant Contract Complete

- 7.1 **Assignment.** The Grantee may neither assign nor transfer any rights or obligations under this grant contract without the prior consent of the State and a fully executed Assignment Agreement, executed and approved by the same parties who executed and approved this grant contract, or their successors in office.
- 7.2 **Amendments.** Any amendment to this grant contract must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original grant contract, or their successors in office.
- 7.3 **Waiver.** If the State fails to enforce any provision of this grant contract, that failure does not waive the provision or its right to enforce it.
- 7.4 **Grant Contract Complete.** This grant contract contains all negotiations and agreements between the State and the Grantee. No other understanding regarding this grant contract, whether written or oral, may be used to

bind either party.

## **8 Liability**

The Grantee must indemnify, save, and hold the State, its agents, and employees harmless from any claims or causes of action, including attorney's fees incurred by the State, arising from the performance of this grant contract by the Grantee or the Grantee's agents or employees. This clause will not be construed to bar any legal remedies the Grantee may have for the State's failure to fulfill its obligations under this grant contract.

## **9 State Audits**

Under Minn. Stat. § 16C.05, subd. 5, the Grantee's books, records, documents, and accounting procedures and practices relevant to this grant contract are subject to examination by the State and/or the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this grant contract.

## **10 Government Data Practices**

The Grantee and State must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, as it applies to all data provided by the State under this grant contract, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Grantee under this grant contract. The civil remedies of Minn. Stat. § 13.08 apply to the release of the data referred to in this clause by either the Grantee or the State.

If the Grantee receives a request to release the data referred to in this Clause, the Grantee must immediately notify the State. The State will give the Grantee instructions concerning the release of the data to the requesting party before the data is released.

## **11 Workers' Compensation**

The Grantee certifies that it is in compliance with Minn. Stat. § 176.181, subd. 2, pertaining to workers' compensation insurance coverage. The Grantee's employees and agents will not be considered State employees. Any claims that may arise under the Minnesota Workers' Compensation Act on behalf of these employees and any claims made by any third party as a consequence of any act or omission on the part of these employees are in no way the State's obligation or responsibility.

## **12 Publicity and Endorsement**

**12.1 Publicity.** Any publicity regarding the subject matter of this grant contract must identify the State as the sponsoring agency and must not be released without prior written approval from the State's Authorized Representative. For purposes of this provision, publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Grantee individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this grant contract.

**12.2 Endorsement.** The Grantee must not claim that the State endorses its products or services.

## **13 Governing Law, Jurisdiction, and Venue**

Minnesota law, without regard to its choice-of-law provisions, governs this grant contract. Venue for all legal proceedings out of this grant contract, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

## **14 Termination**

**14.1 Termination by the State.** The State may cancel this grant contract at any time, with or without cause, upon 30 days' written notice to the Grantee. Upon termination, the Grantee will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed.

**14.2 Termination for Insufficient Funding.** The State may immediately terminate this grant contract if it does not obtain funding from the Minnesota Legislature, or other funding source; or if funding cannot be continued at a level sufficient to allow for the payment of the services covered here. Termination must be by written or fax notice to the Grantee. The State is not obligated to pay for any services that are provided after notice and effective date of termination. However, the Grantee will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed to the extent that funds are available. The State will not

32  
be assessed any penalty if the grant contract is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds. The State must provide the Grantee notice of the lack of funding within a reasonable time of the State receiving that notice.

### 15 Data Disclosure

Under Minn. Stat. § 270C.65, and other applicable law, the Grantee consents to disclosure of its social security number, federal employer tax identification number, and/or Minnesota tax identification number, already provided to the State, to federal and state tax agencies and state personnel involved in the payment of state obligations. These identification numbers may be used in the enforcement of federal and state tax laws which could result in action requiring the Grantee to file state tax returns and pay delinquent state tax liabilities, if any, or pay other state liabilities.

#### 1. ENCUMBRANCE VERIFICATION

*Individual certifies that funds have been encumbered as required by Minn. Stat. §§ 16A.15 and 16C.05.*

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

Grant Contract No. 50000006108

#### 2. GRANTEE

*The Grantee certifies that the appropriate person(s) have executed the grant contract on behalf of the Grantee as required by applicable articles, bylaws, resolutions, or ordinances.*

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

#### 3. STATE AGENCY

By: \_\_\_\_\_  
(with delegated authority)

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Distribution:  
DPS/FAS  
Grantee  
State's Authorized Representative

**RESOLUTION NO. 09-107**

**A RESOLUTION TO ACCEPT THE GRANT OF MONIES  
TO BE USED TOWARD THE ANOKA COUNTY DWI TASK FORCE  
FROM THE MINNESOTA DEPARTMENT OF PUBLIC SAFETY, OFFICE OF  
TRAFFIC SAFETY THROUGH THEIR OPERATION NIGHTCAP PROGRAM**

**WHEREAS**, the Minnesota Department of Public Safety, Office of Traffic Safety through their Operation NightCAP Program has offered to donate \$26,950.00 to the City; and

**WHEREAS**, Minn. Stat. § 465.03 allows cities to accept donations of real or personal property by resolution adopted by a two-thirds majority of Council; and

**WHEREAS**, the City Council finds the offered donation to be in the public interest;

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Coon Rapids that the donation of \$26,950.00 is hereby accepted.

**BE IT FURTHER RESOLVED** that the City of Coon Rapids hereby extends its gratitude to the Minnesota Department of Public Safety, Office of Traffic Safety for its generosity.

Adopted by the Coon Rapids City Council this 17th day of November, 2009.

\_\_\_\_\_  
Tim Howe, Mayor

ATTEST:

\_\_\_\_\_  
Joan A. Anderson, City Clerk





TO: Mayor, City Councilmembers, City Manager

FROM: Steve Gatlin, Public Services Director

SUBJECT: Open Mic Report  
Jerry Pierce, 12236 Partridge Street  
Re: Bunker Hills Clubhouse

DATE: November 17, 2009

### INTRODUCTION

Jerry Pierce, 12236 Partridge Street, appeared at Open Mic at the November 4, 2009 Council meeting. He expressed concerns about use of a construction manager for the Bunker Hills Clubhouse project.

### DISCUSSION

At the October 20, 2009 meeting, Council approved a contract with Amcon Construction Managers LLC for construction manager services during the design phase of the Bunker Hills Clubhouse project. Staff and the architect recommended that the use of a construction manager would be desirable during the design of the clubhouse project to provide accurate cost estimates during the various design phases. Construction managers have much closer contact to the construction industry and are able to provide more accurate cost estimates for various project components than either the architects or City staff. For this reason staff recommended use of a construction manager during the project. Council concurred and authorized a contract with Amcon Construction Managers for an amount of \$19,800 for construction manager services to provide periodic cost estimates during the design phase for the Bunker Hills Clubhouse project.

Mr. Pierce expressed an opinion that use of a construction manager was not necessary. He felt that the architect and City staff could provide plan review and cost estimates. Council concurred with staff's recommendation for use of the construction manager. The contract was executed following the October meeting and Amcon Construction Managers is now working with the architect and City staff to provide construction manager services during the design phase only.

### RECOMMENDATION

No action is necessary regarding this item.

Cc: Jerry Pierce  
12236 Partridge St NW  
Coon Rapids, MN 55448-1839





TO: Mayor, City Councilmembers, City Manager *WJ*  
 FROM: Doug Vierzba, City Engineer *DV* *lg*  
 SUBJECT: Main Street Upgrade—Project 07-36  
 Thrush Street to Crane Street  
 A. Continue Public Hearing From November 4<sup>th</sup>  
 B. Resolution Ordering Project

DATE: November 17, 2009

### INTRODUCTION

Council opened the public hearing on November 4<sup>th</sup> regarding proposed extensions of sanitary sewer and watermain to serve four properties on the north side of Main Street. None of the property owners attended the Council meeting. Council decided to continue the hearing to November 17<sup>th</sup> so that the affected property owners could give their opinion of the proposed project. Council is requested to hold the public hearing and then decide whether to proceed with the project or not.

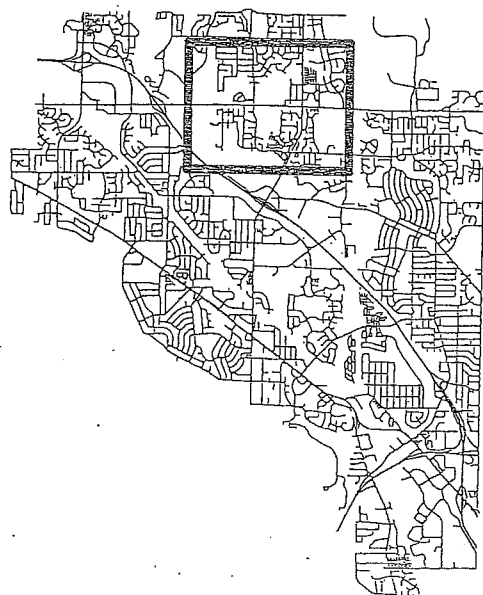
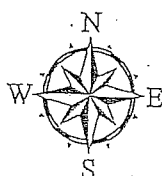
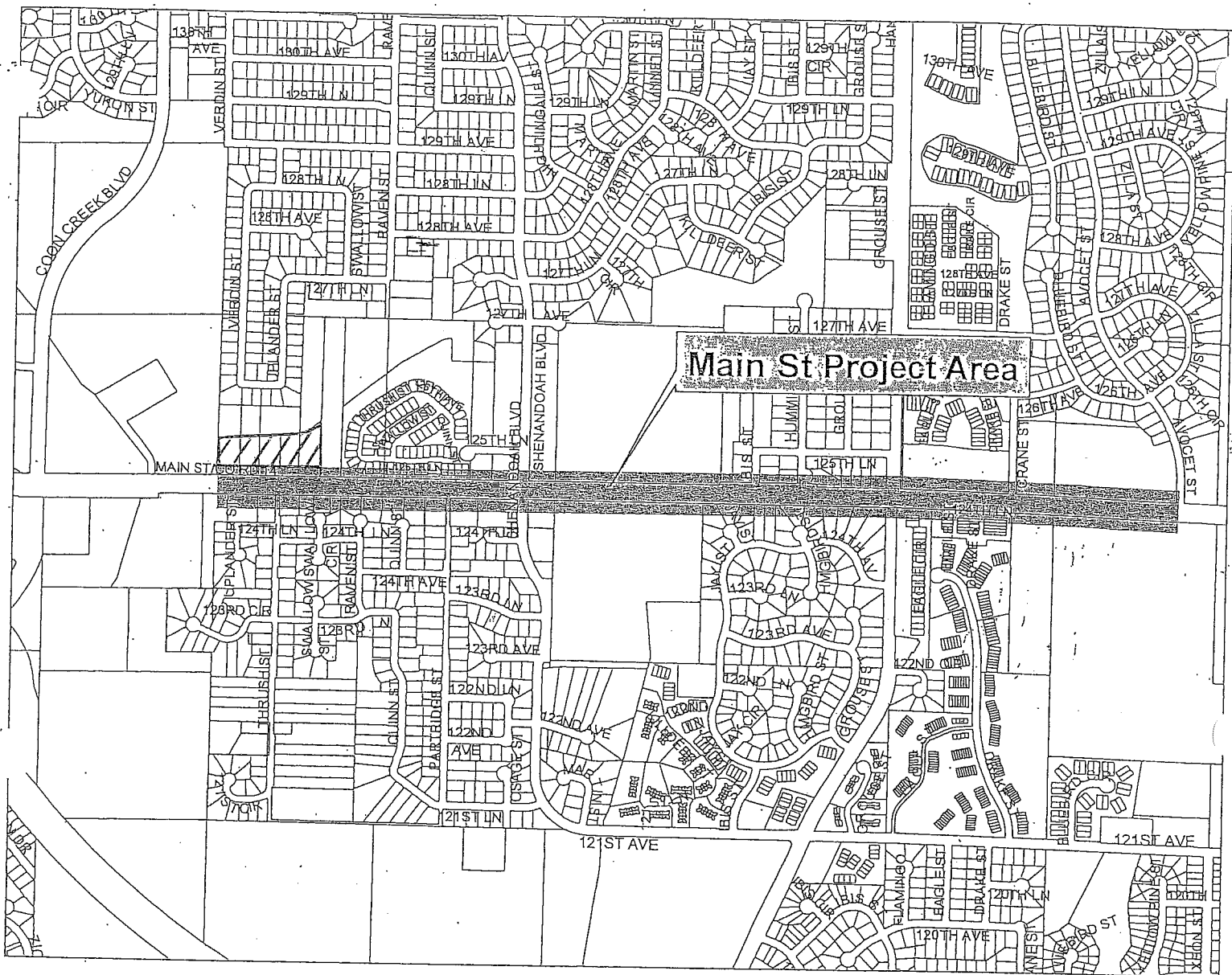
### DISCUSSION

The four property owners were notified of the public hearing to be held on November 4<sup>th</sup> but did not attend the meeting. The estimated cost of the project is \$73,000 and the “benefit” to the property owners is estimated to be \$28,200 leaving a balance of \$44,800 that would have to be paid by the City. Council discussed the project feasibility and some Councilmembers did not think it was fair to the taxpayers of the City to help pay for sewer and water service to this area. Council directed staff to contact the property owners to get their feeling on the proposed project. Property owners were contacted and asked for their opinion of the project and invited to respond in writing or attend the Council meeting on November 17<sup>th</sup>. It is unlikely that property owners would be willing to be assessed for the full cost of the project. If the project is to proceed, the City would have to subsidize the project. Staff will pass on any written comments to Council on the 17<sup>th</sup>.

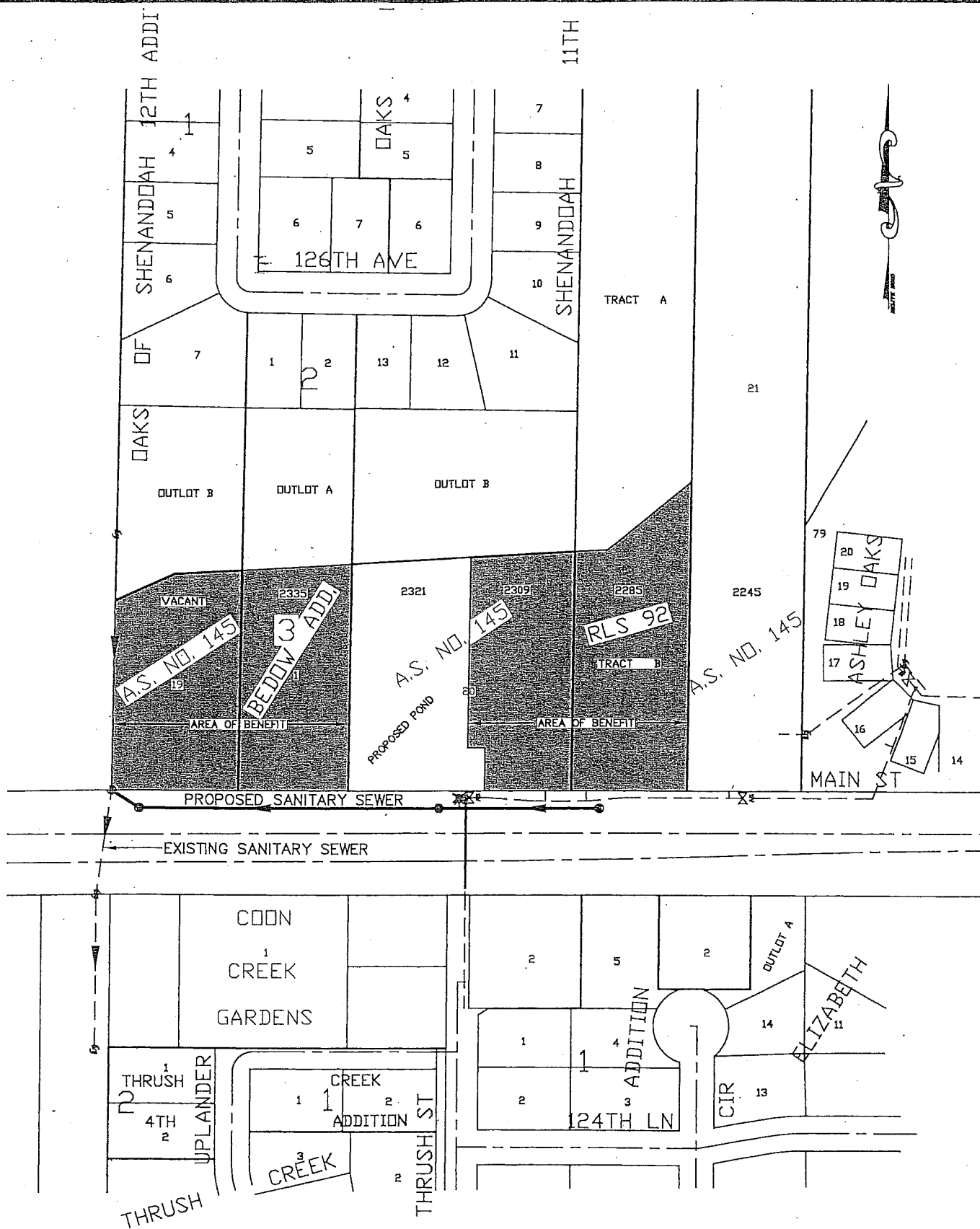
### RECOMMENDATION

It is recommended that Council take the following action—

- A. Continue the public hearing from November 4<sup>th</sup> and then close the hearing
- B. Deny the resolution ordering the project due to the project not being financially feasible  
or  
 Adopt Resolution No. 07-36(6) ordering the project with the City subsidizing the project.  
 A “super majority” vote would be needed to approve the project.



5a/b

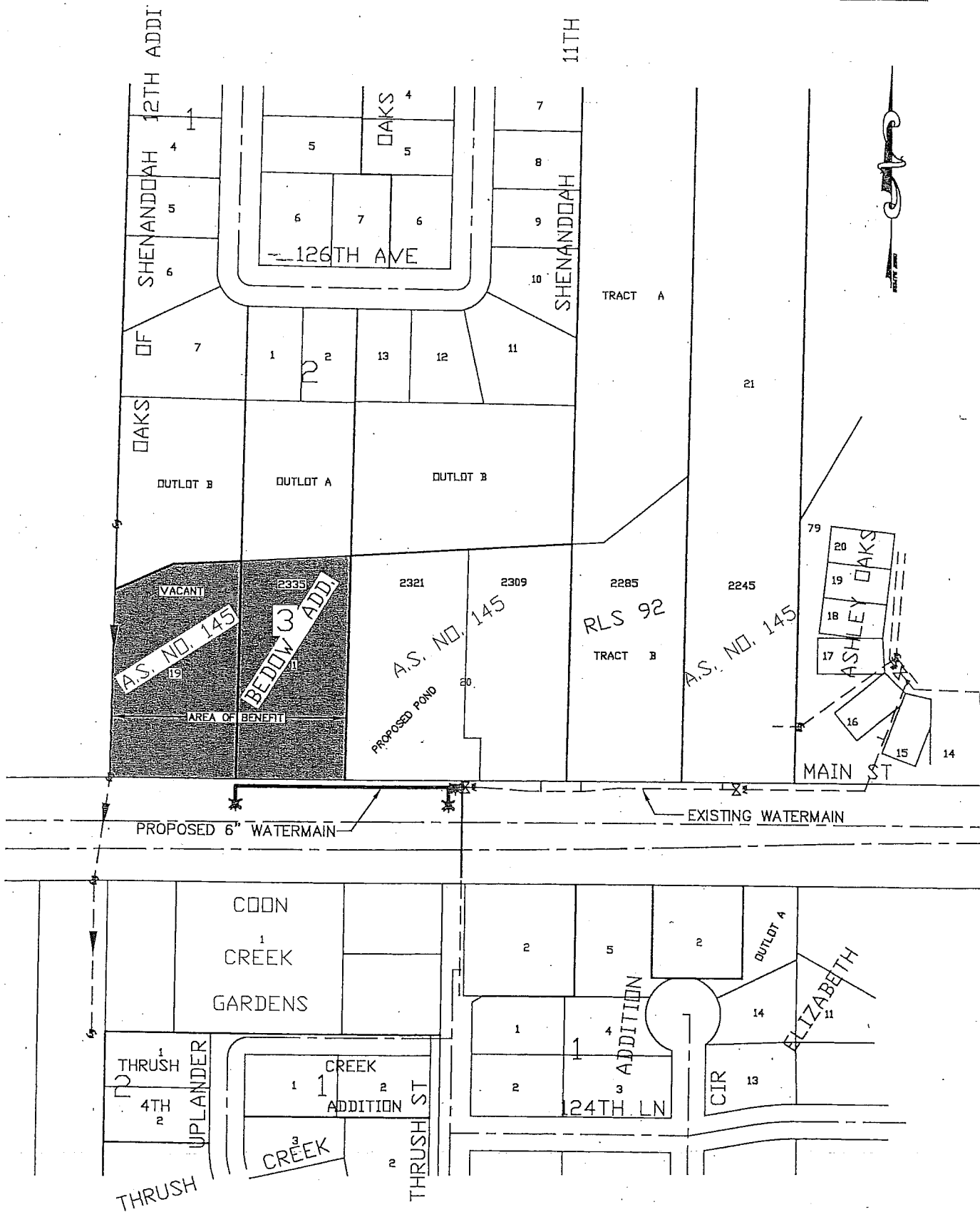


**COON RAPIDS**  
Minnesota

City of Coon Rapids  
11155 Robinson Drive  
Coon Rapids, MN 55433-3761  
Tel: 763-755-2880  
Fax: 763-767-6491  
www.coonrapidsmn.gov

# PROJECT 07-36 MAIN STREET SANITARY SEWER CONSTRUCTION

DRAWN	T.T.H.	DATE	9/28/09	SCALE	1" = 200'	PLATE NO.
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**COON RAPIDS**  
 Minnesota  
 City of Coon Rapids  
 11155 Robinson Drive  
 Coon Rapids, MN 55433-3761  
 Tel: 763-755-2880  
 Fax: 763-767-6491  
 www.coonrapidsmn.gov

# PROJECT 07-36 MAIN STREET WATERMAIN CONSTRUCTION

DRAWN	T.T.H.	DATE	9/28/09	SCALE	1" = 200'	PLATE NO.
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546

**RESOLUTION NO. 07-36(6)**

**(6) RESOLUTION ORDERING IMPROVEMENT  
AND PREPARATION OF PLANS**

**WHEREAS**, a resolution of the City Council adopted on the 6th day of October, 2009, fixed a date for a Council hearing on the proposed improvement of Main Street from 2245 Main Street to 2355 Main Street by construction of sanitary sewer and watermain; and

**WHEREAS**, ten days' published notice of the hearing through two weekly publications of the required notice and mailed notices to affected property owners were given and the hearing was held thereon on the 4th day of November, 2009 and continued to the 17<sup>th</sup> day of November, 2009, at which all persons desiring to be heard were given an opportunity to be heard thereon and the maximum estimated amount of debt to be incurred by the City is \$73,000; and

**WHEREAS**, the City of Coon Rapids expects to reimburse all or a portion of the project expenditures with the proceeds of debt to be incurred by the City; and

**WHEREAS**, this declaration is made pursuant to Section 1.103-18 of the Income Tax Regulations of the Internal Revenue Service.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of Coon Rapids, Minnesota:

1. Such improvement is necessary, cost effective with City subsidy, and feasible to construct as detailed in the feasibility report.
2. Such improvement is hereby ordered as proposed in the Council Resolution adopted on the 17th day of November, 2009.
3. SEH, Inc. is hereby designated as the engineer for this improvement. SEH, Inc. shall prepare plans and specifications for the making of such improvement.

Adopted this 17th day of November, 2009.

\_\_\_\_\_  
Tim Howe, Mayor

ATTEST:

\_\_\_\_\_  
Joan A. Anderson, City Clerk







6a/b

TO: Mayor, City, Councilmembers, *WJ*  
City Manager

FROM: Scott Harlicker  
Planner *A* *[Signature]*

DATE: November 17, 2009

SUBJECT: **Planning Case 09WC13**  
**Antenna Permit Application**  
Clearwire Communications  
11710 Round Lake Boulevard

### **INTRODUCTION**

Clearwire Communications is requesting permit approval to erect a commercial wireless communication facility consisting of 75 foot tower with three antennas and ground equipment enclosed with a block wall enclosure. The tower is proposed on Classic Bowl property located at 11710 Round Lake Boulevard.

### **DISCUSSION**

The proposal includes three antennas mounted on the top of the 75 foot tower. Surrounding land uses include an apartment building to the east, the bowling alley to the south, Round Lake Boulevard and a commercial building to the west and a vacant lot and an office building to the north. The tower will be designed to accommodate co-location opportunities for additional carriers. The applicant has provided documentation that the tower is designed so that in the event of a collapse the debris will not endanger adjacent property.

The tower will be located on the north side of the bowling alley, next to the dumpster enclosure. The tower is setback 78 feet from the north property line, 122 feet from the east property line and 267 from the west property line. The antennas and equipment cabinet are the same design as those the Council has reviewed on previous co-location requests by this applicant. The base of the tower and equipment cabinet will be enclosed by a block wall to match the dumpster enclosure.

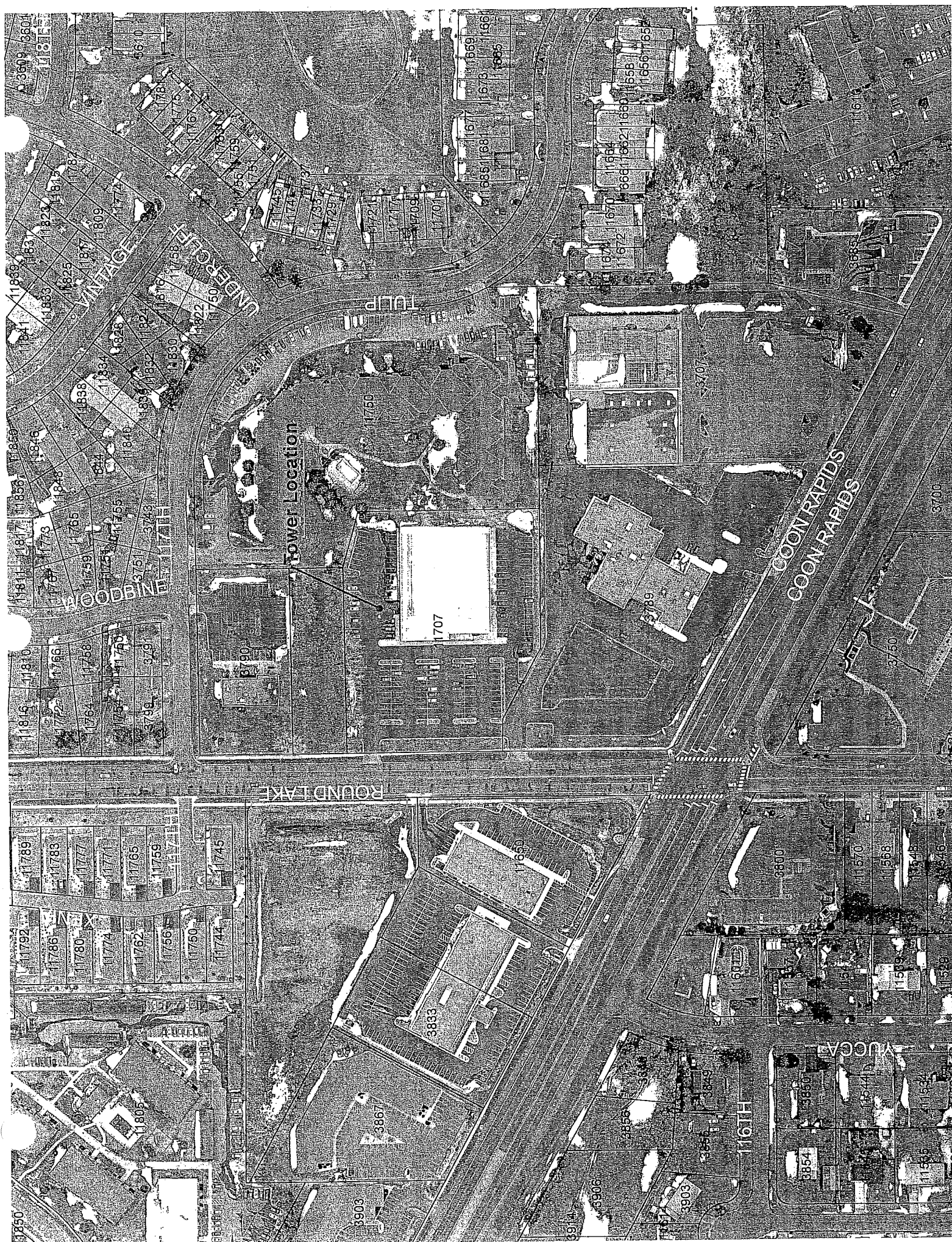
City Code requires the City Council hold a public hearing on this matter and that a decision be made no later than Council's next regular meeting following this meeting date unless an extension has been agreed to by the applicant. No extension has been requested and staff has no reason to request an extension. The application was compared to the criteria found in chapter 13-1200 of the City Code. The application is in conformance with applicable City Code provisions.

### **RECOMMENDATION**

Staff recommends in Planning Case 09WC13, Council:

- a. Conduct the advertised public hearing on this application.
- b. Approve the proposed commercial antenna tower with the following conditions:
  1. The applicant sign a security agreement.
  2. The equipment cabinet be painted tan







Existing

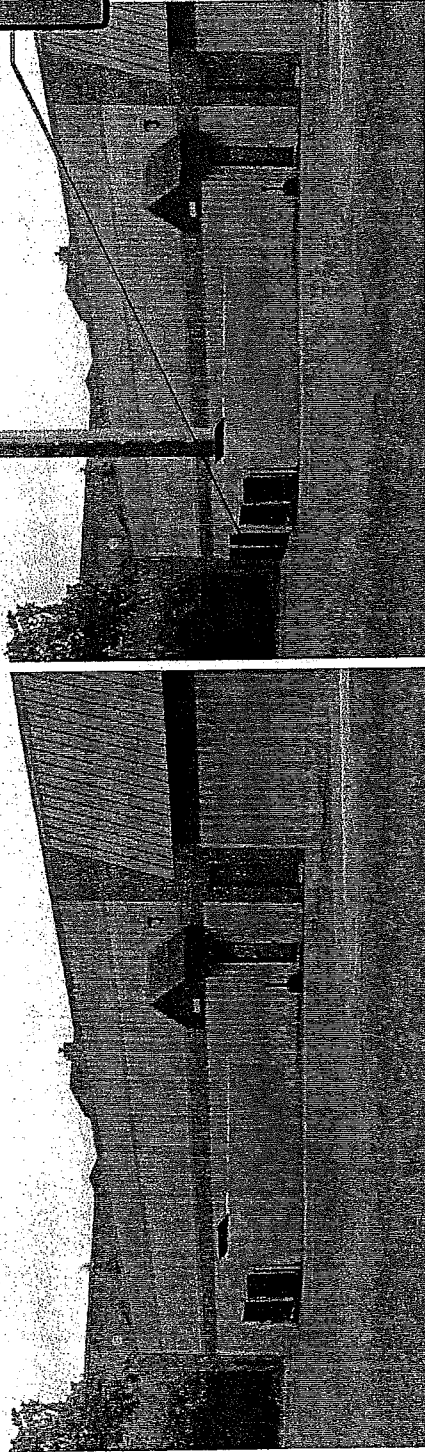
Proposed

PROPOSED THREE PANEL  
ANTENNAS, THREE DIRECTIONAL  
ANTENNAS & THREE DAPS  
MOUNTED WITHIN PROPOSED  
75' HIGH STEALTH POLE

**clearwire**  
wireless broadband

**MN-MSP0238**  
1707 ROUND LAKE BLVD NW  
COON RAPIDS, MN 56433

PROPOSED 6' HIGH CMU  
ENCLOSURE TO MATCH EXISTING  
(EQUIPMENT LOCATION)



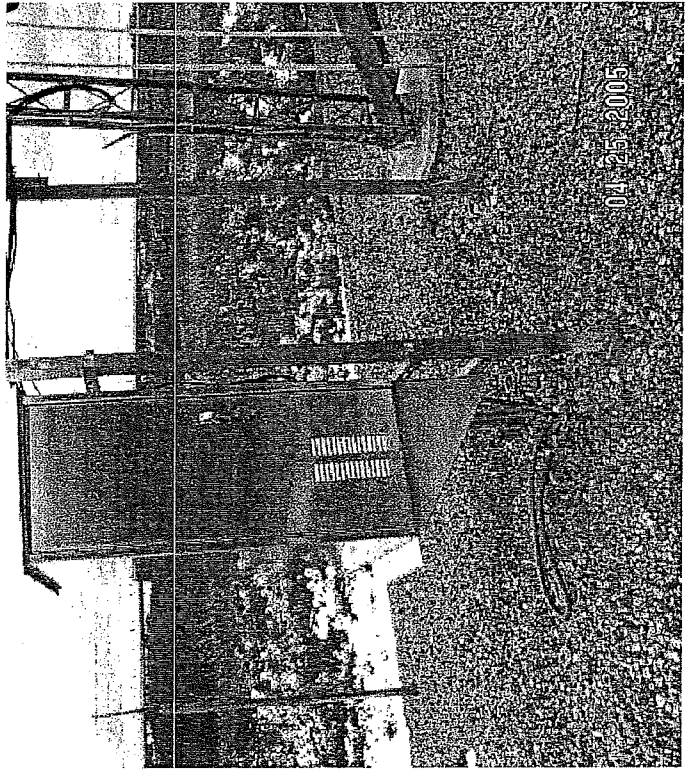
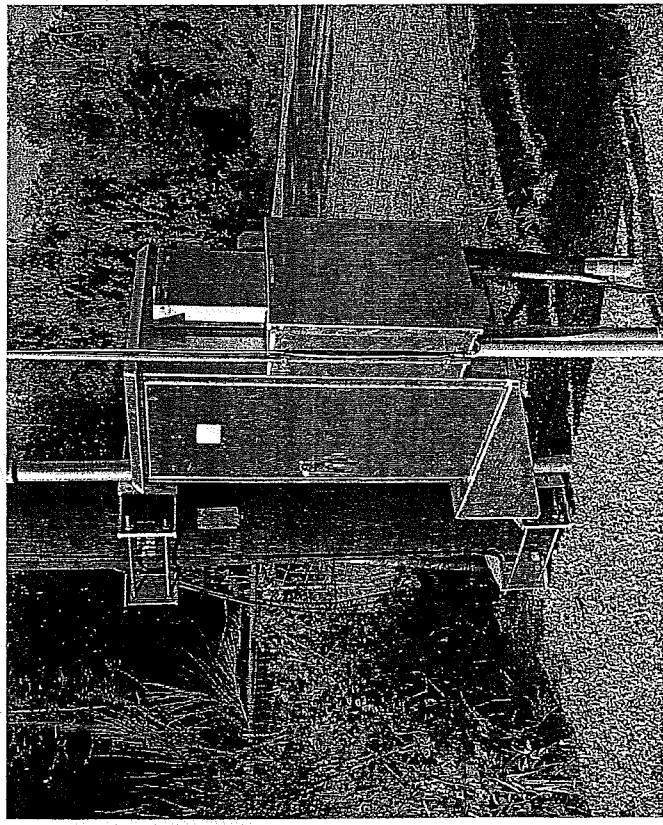
WIRELESS

**VIEW 1**

**PHOTOSIMULATION**

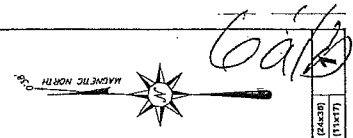


# Clearwire Equipment Cabinet- DAP Config. clearwire

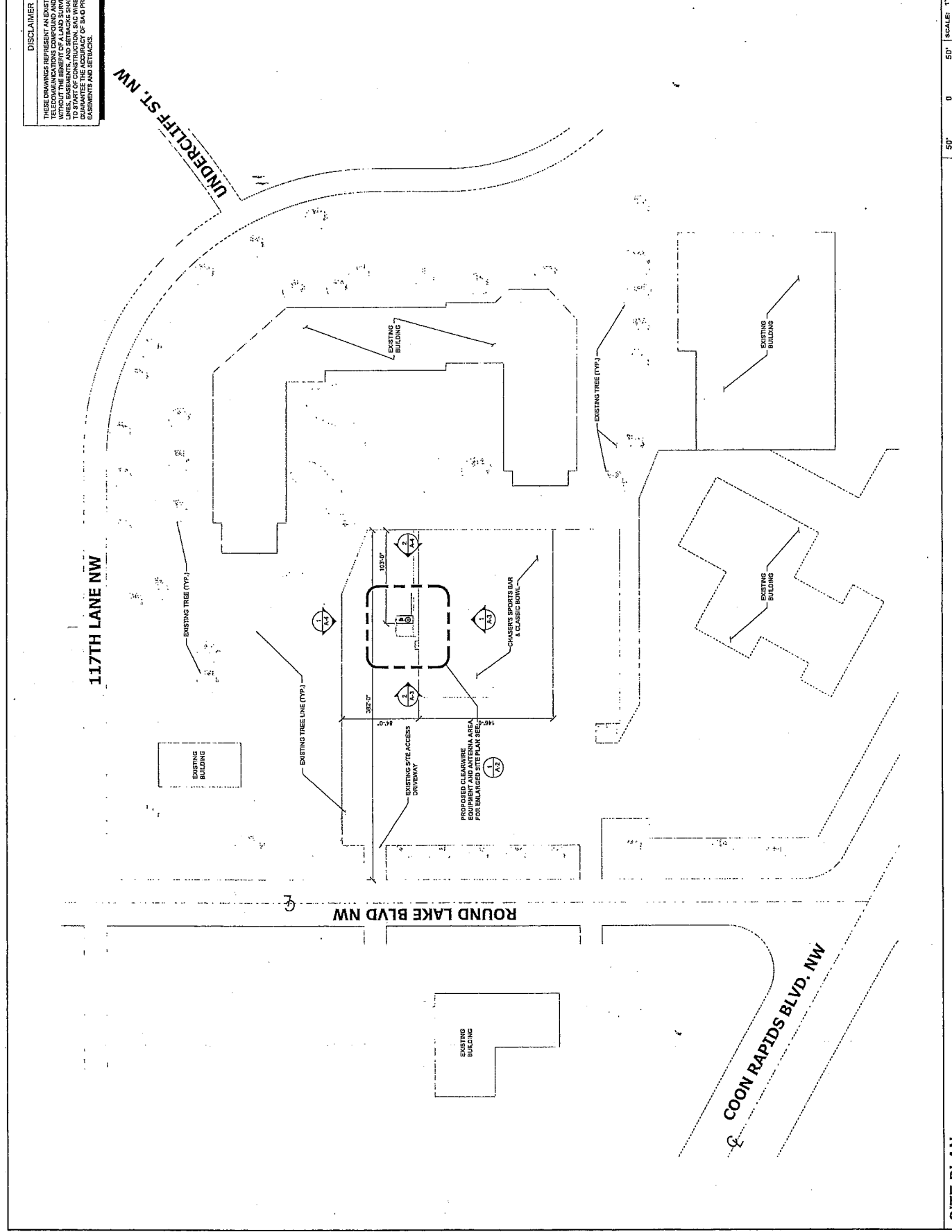


**DISCLAIMER**

THESE DRAWINGS REPRESENT AN EXISTING TELECOMMUNICATIONS COMPUND AND WERE PRODUCED BY THE ENGINEER BASED ON INFORMATION PROVIDED BY THE CLIENT. THE ENGINEER HAS NOT CONDUCTED A FIELD SURVEY OF THE SITE AND THEREFORE DOES NOT GUARANTEE THE ACCURACY OF THE INFORMATION PROVIDED. THE CLIENT SHALL BE RESPONSIBLE FOR VERIFYING THE LOCATION OF ALL UTILITIES, EASEMENTS, AND SETBACKS PRIOR TO START OF CONSTRUCTION. EAC WIRELESS DOES NOT WARRANT THE ACCURACY OF THE INFORMATION PROVIDED OR THE RESULTS OF ANY FIELD SURVEY.



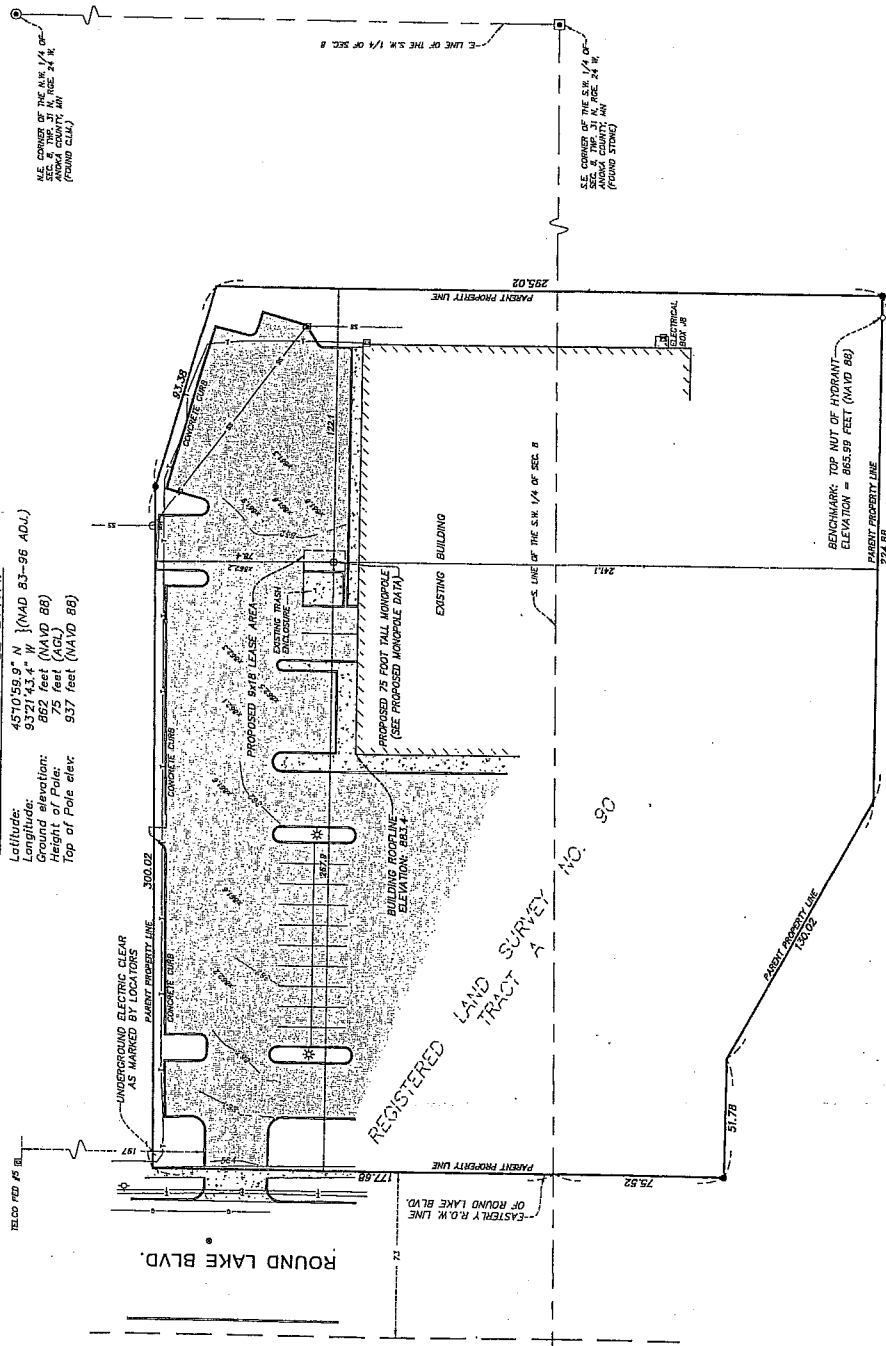
SCALE: 1" = 50'-0" (24.38)  
 (0N) 10" = 50'-0" (11.11)



**SITE PLAN**

THE INFORMATION CONTAINED IN THIS SET OF ZONING DOCUMENTS IS PROPRIETARY BY NATURE. ANY USE OR DISCLOSURE OTHER THAN THAT WHICH RELATES TO CARRIER SERVICES IS STRICTLY PROHIBITED.

Latitude: 45°10'59.9" N {NAD 83-96 ADJ.}  
 Longitude: 93°21'43.4" W  
 Ground elevation: 862 feet (NAVD 88)  
 Height of Pole: 75 feet (AGL)  
 Top of Pole elev: 937 feet (NAVD 88)



© DENOTES FOUND CAST IRON MONUMENT  
 □ DENOTES FOUND STONE  
 ● DENOTES FOUND IRON MONUMENT

**PARENT PROPERTY DESCRIPTION:**  
per Anoka County Property Information Web Site)

Tract A, Registered Land Survey No. 90, Anoka County, Minnesota.

**NOTES:**

1. The orientation of this bearing system is based on the Anoka County Coordinate Grid, (NAD 83-96 ADJ).

2. BENCHMARK: Top nut of the hydrant located in the southeast quadrant of Tract A, Registered Land Survey No. 90. Elevation = 855.89 feet (NAVD 88), as derived by OPUS Solution.

3. Access to the existing tower site is from Round Lake Blvd.

4. No title work was furnished in the preparation of this survey to verify ownership, the legal description, or the existence of any easements or encumbrances to the property.
5. According to the Federal Emergency Management Agency Web Site the property is located within Flood Zone C (areas outside 500 year flood frequency) as shown on Federal Flood Insurance Rate Map No. 2700110002A dated March 15, 1977.

5. Existing underground structures, services and utilities shown hereon were located by field markings provided by Gopher One, Ticket No. 99554501. Other utilities and services may be present. Verification and location of all utilities and services should be obtained from the owners of the respective utilities prior to any design, planning or excavation.

7. Parent Property Parcel Number: 08-31-24-34-0218

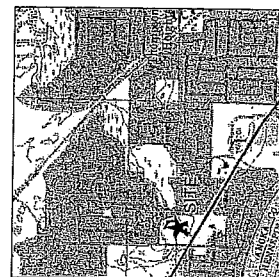
3. This survey does not purport to show all improvements.

**CERTIFICATION:** I hereby certify that this survey was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.

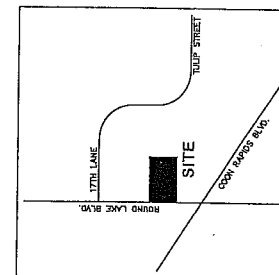
Date of survey: October 13, 2009

Only if the Surveyor's signature or stamp is in RED is this an original copy. Anything other than an original copy may contain unauthorized alterations to the original. The surveyor accepts no responsibility for non-original copies of this document.














by: Lee J. Nord  
Minnesota License No. 22033



**QUAD MAP**  
**NOT TO SCALE**

VICINITY MAP  
NOT TO SCALE

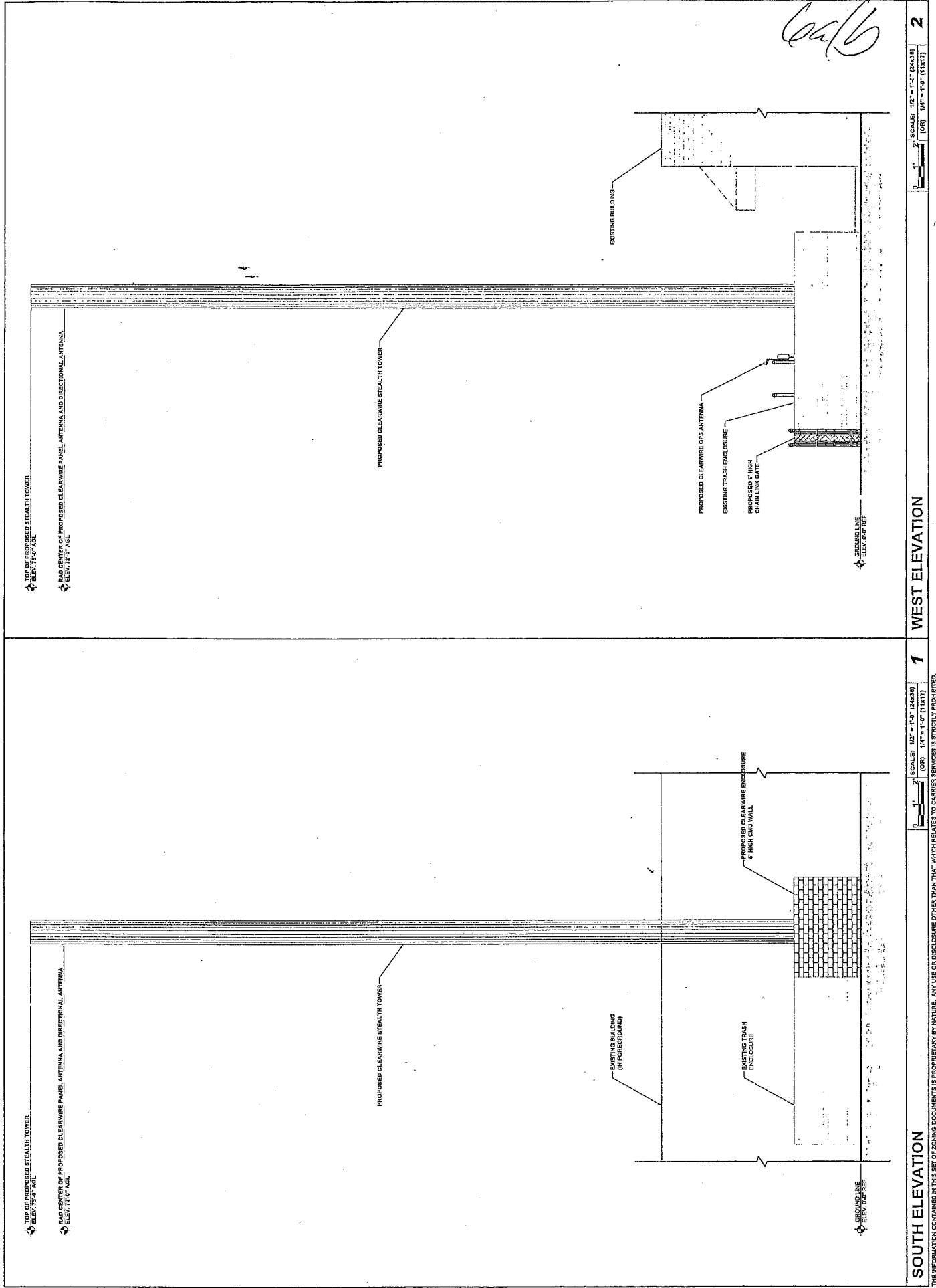
**LEGEND:**

	MANHOLE
	HYDRANT
	CATCH BASIN
	GATE VALVE
	COMMUNICATION BOX
	ELECTRIC BOX
	LIGHT POLE
	GAS LINE
	TELECO LINE
	STORM SEWER
	SPOT ELEVATION
	CONCRETE SURFACE
	BITUMINOUS SURFACE

1" = 80.1 ft

FIELD BOOK	PAGE	FIELDWORK
2715	35	CHIEF:
		Brad
		DRAWN BY:
		NCP
DRAWING NAME:		CHECKED
34133--TOWER.dwg		BY:
JOB NO. 34133		JN
FILE NO. 234		





THE INFORMATION CONTAINED IN THIS SET OF ZONING DOCUMENTS IS PROPRIETARY BY NATURE. ANY USE OR DISCLOSURE OTHER THAN THAT WHICH RELATES TO CARRIER SERVICES IS STRICTLY PROHIBITED.





**TO:** Mayor, City, Councilmembers, *[Signature]*  
City Manager

**FROM:** Scott Harlicker  
Planner *[Signature]*

**DATE:** November 17, 2009

**SUBJECT:** **Planning Case 09WC17**  
**Antenna Permit Application**  
Clearwire Communications  
12156 Olive Street

### INTRODUCTION

Clearwire Communications is requesting permit approval to erect a commercial wireless communication facility consisting of 75 foot tower with three antennas and ground equipment enclosed with a chain link fence. The tower is proposed on Sand Creek Elementary School property located at 12156 Olive Street.

### DISCUSSION

The proposal includes three antennas mounted on the top of the 75 foot tower. Surrounding land uses include school property and single family homes on the east side of Olive Street. The tower will be designed to accommodate co-location opportunities for additional carriers. The applicant has provided documentation that the tower is designed so that in the event of a collapse the debris will not endanger adjacent property.

The tower will be located on the north side of the school parking lot, next to a storage building. The tower is setback 217 feet from Olive Street, 325 feet from the north property line, 409 feet from the west property line and 624 feet from the south property line. The antennas and equipment cabinet are the same design as those the Council has reviewed on previous co-location requests by this applicant. The base of the tower and equipment cabinet will be enclosed by a chain link fence.

City Code requires the City Council hold a public hearing on this matter and that a decision be made no later than Council's next regular meeting following this meeting date unless an extension has been agreed to by the applicant. No extension has been requested and staff has no reason to request an extension.

The application was compared to the criteria found in chapter 13-1200 of the City Code. The application is in conformance with applicable City Code provisions, except for landscaping the area around the enclosure. The north and west sides of the enclosure should be screened with shrubs or evergreens.

## **RECOMMENDATION**

Staff recommends in Planning Case 09WC17, Council:

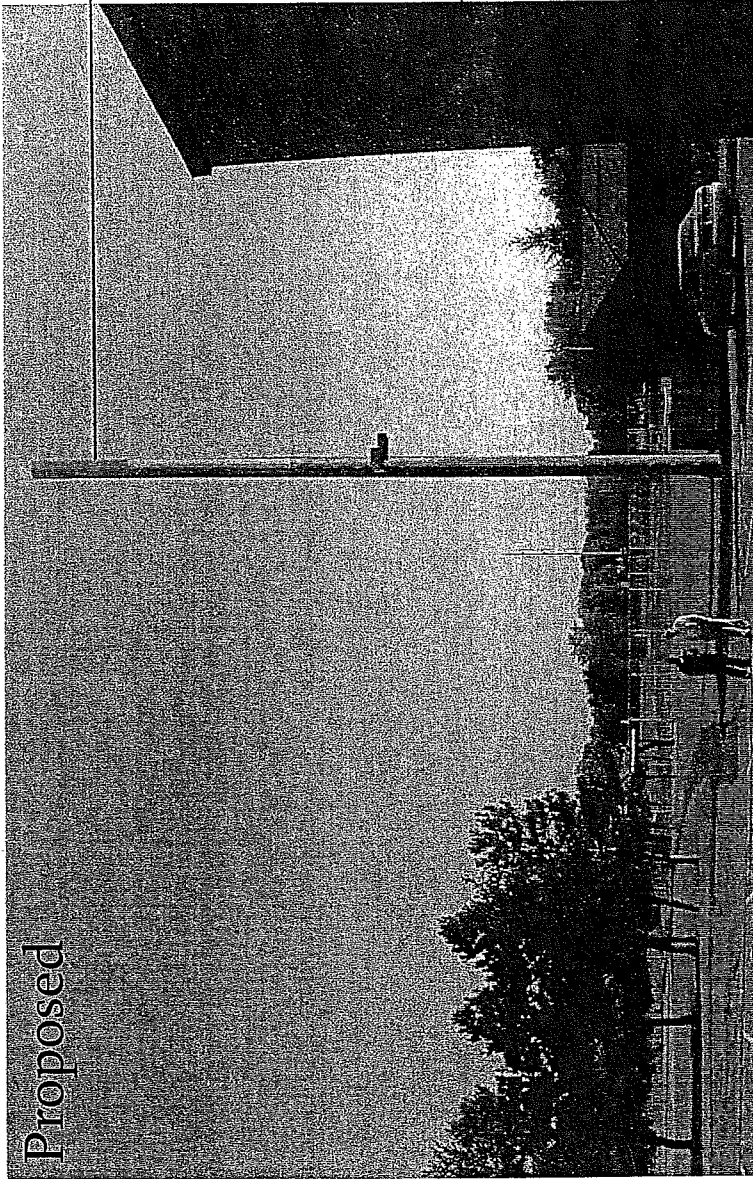
- a. Conduct the advertised public hearing on this application.
- b. Approve the proposed commercial antenna tower with the following conditions:
  1. The applicant sign a security agreement.
  2. The north and west sides of the enclosure must be screened with shrubs or evergreens.
  3. The equipment cabinet be painted tan







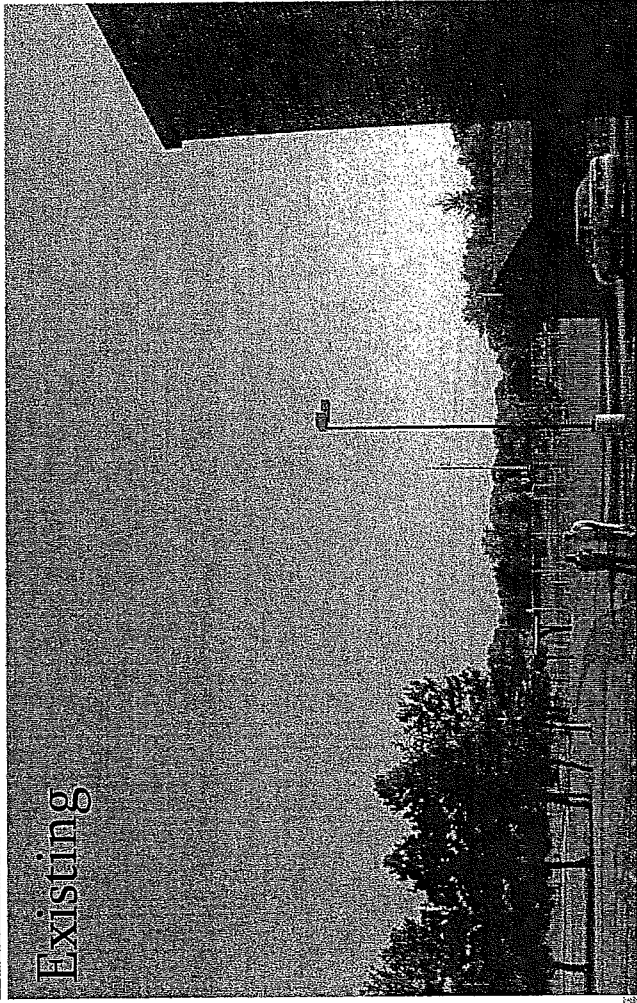
Proposed



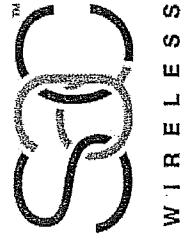
PROPOSED THREE PANEL  
ANTENNAS, THREE DIRECTIONAL  
ANTENNAS, & THREE DAPS  
MOUNTED WITHIN PROPOSED 75'  
STEALTH MONOPOLE

PROPOSED EQUIPMENT BEHIND  
PROPOSED FENCE

Existing



clearwire  
wireless broadband  
**MSP-0306**  
**SAND CREEK**

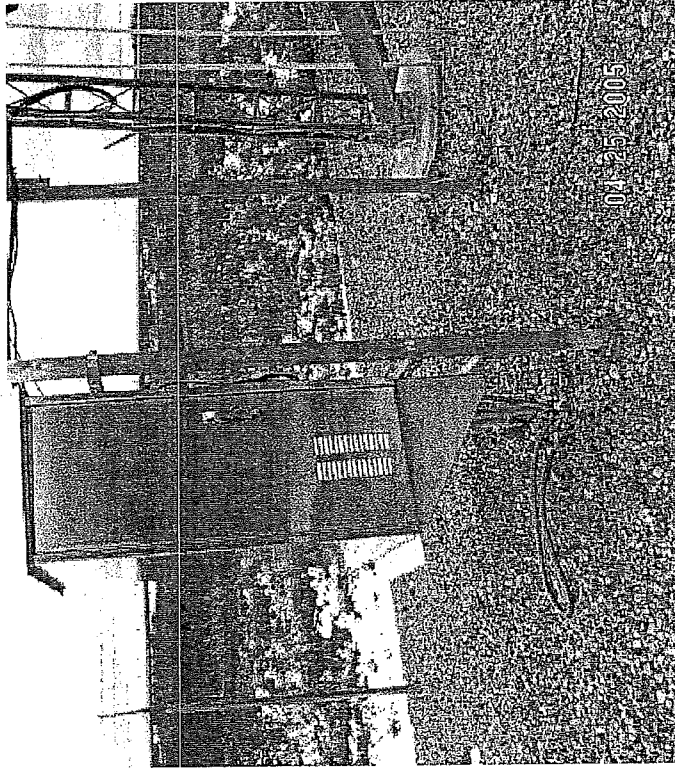
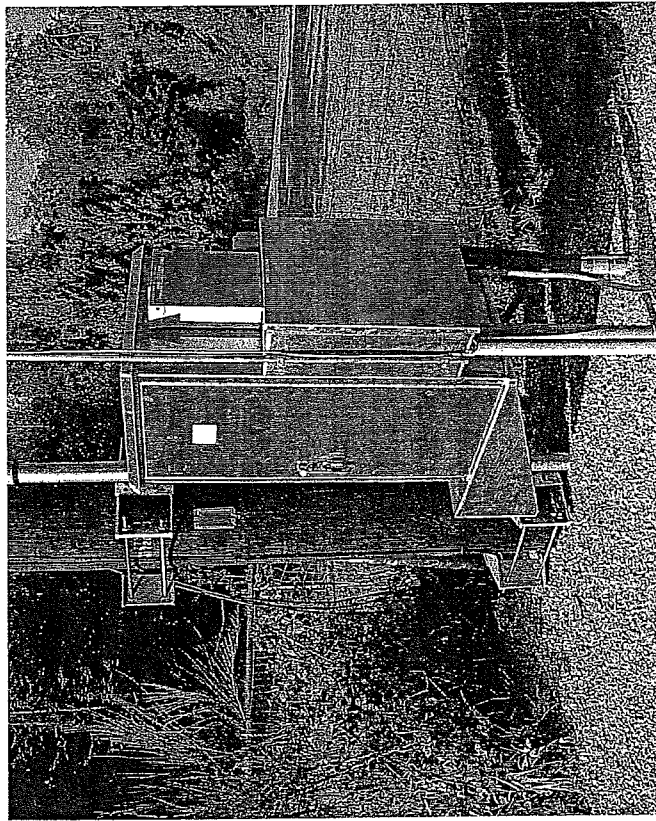


**PHOTOSIMULATION VIEW 1**





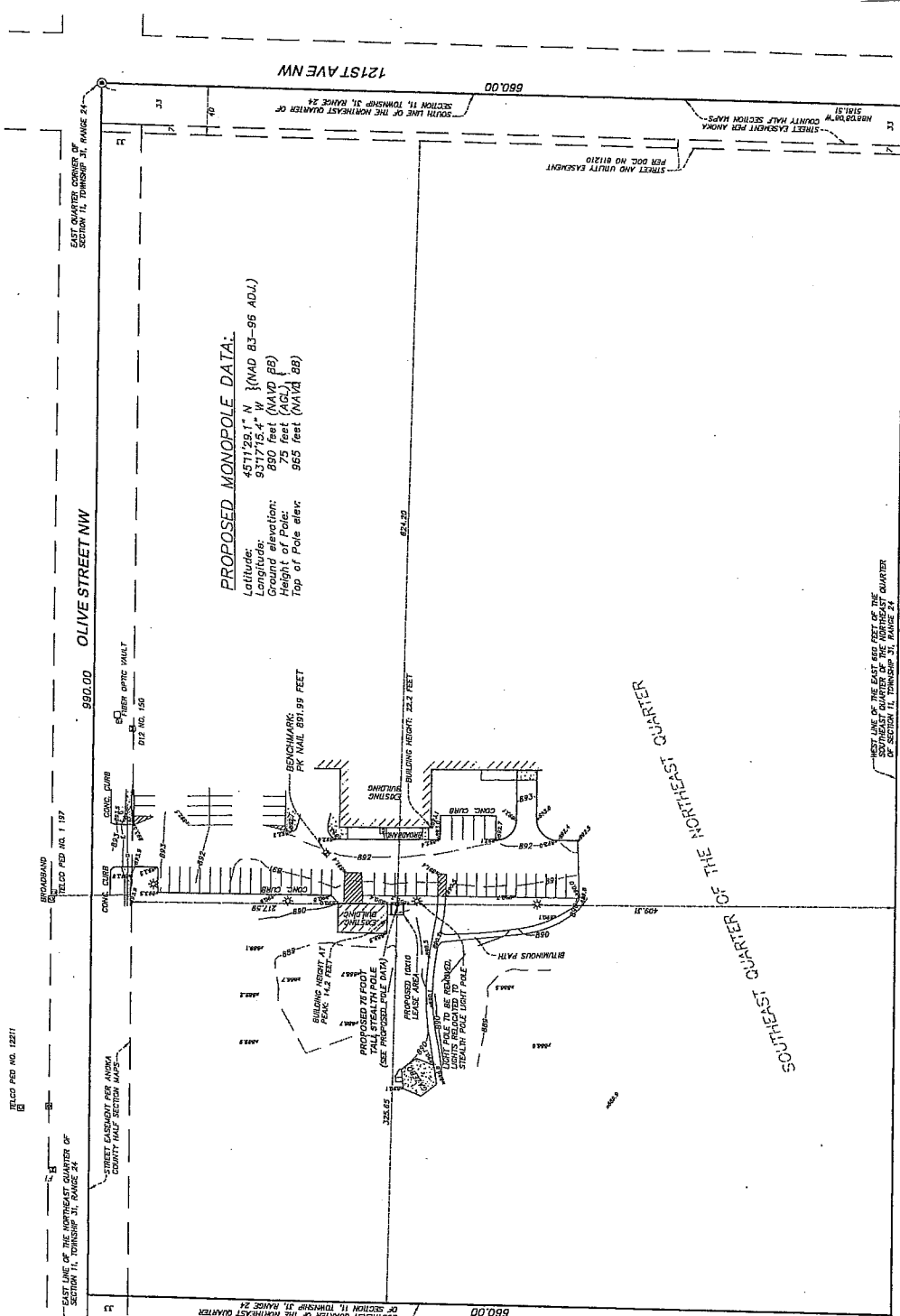
# Clearwire Equipment Cabinet- DAP Config. clearwire



7a/b







# PROPOSED MONOPOLE DATA:

Latitude: 45°12'28.1" N (NAD 83-95 ADJ.)  
 Longitude: 93°17'15.4" W (NAD 83-95 ADJ.)  
 Ground elevation: 890 feet (NAD 83)  
 Height of Pole: 75 feet (AGL)  
 Top of Pole elev: 965 feet (NAD 83)

## PARENT PROPERTY DESCRIPTION:

(See Anoka County Property Information Web Site)  
 The South 990 feet of the East 660 feet of the Southeast Quarter of Section 11, Township 31, Range 24 as measured along the East and South lines thereof.

## NOTES:

1. The orientation of this bearing system is based on the Anoka County Coordinate Grid. (NAD 83-95 ADJ.)
2. BENCHMARK: Top of PK Nail located in the north entrance of the Sand Creek Elementary School, approximately 45 feet south of the southeast corner of the school maintenance building. Elevation = 891.99 feet (NAD 83 per MNDOT VMS).
3. Access to the existing lower site is from Olive Street NW.
4. No title work was furnished in the preparation of this survey to verify ownership, the legal description, or the existence of any easements or encumbrances to the property.
5. According to the Federal Emergency Management Agency Web Site the property is located within the Flood Insurance Study (FIS) for Anoka County, Minnesota, dated March 15, 1977.
6. Existing underground structures, services, and utilities shown herein were located by electronic means. The location of these structures, services, and utilities should be verified by the owner of the property prior to any design, planning or construction.
7. Parent Property Parcel Number: 11-31-24-14-0002.
8. This survey does not purport to show all improvements.
9. An easement for street and utility purposes per document number 815100 affects the property shown on this plan. The easement contains temporary construction easements which are not shown herein.

## CERTIFICATION:

I hereby certify that this survey was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.

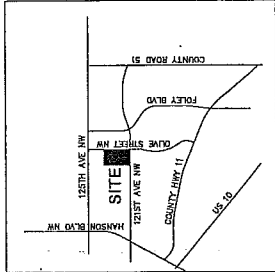
Date of survey, October 21, 2009

By: Lee J. Nord  
 Minnesota License No. 22033

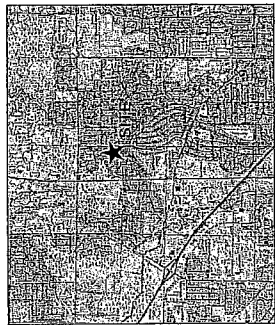
## LEGEND:

- COMMUNICATION BOX
- FIBER OPTIC BOX
- ELECTRIC BOX
- SEWER
- UNDERGROUND TELEPHONE
- UNDERGROUND GAS
- EXISTING CONTOUR LINE
- SPOT ELEVATION
- BRITANNIUS PATH
- CONCRETE SURFACE

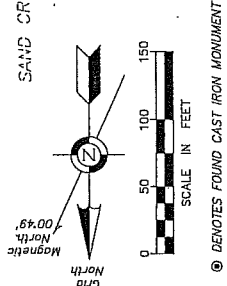
FIELD BOOK	PAGE	FIELDWORK
2845	18	PWD
		DRAWN BY:
		PJD
		CHECKED
		BY:
		LJN
		FILE NO. 2343



VICINITY MAP  
 NOT TO SCALE



QUAD MAP  
 NOT TO SCALE

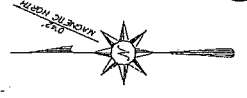


TOWER SITE DETAIL  
 SCALE: 1"=10'

⊙ DENOTES FOUND CAST IRON MONUMENT



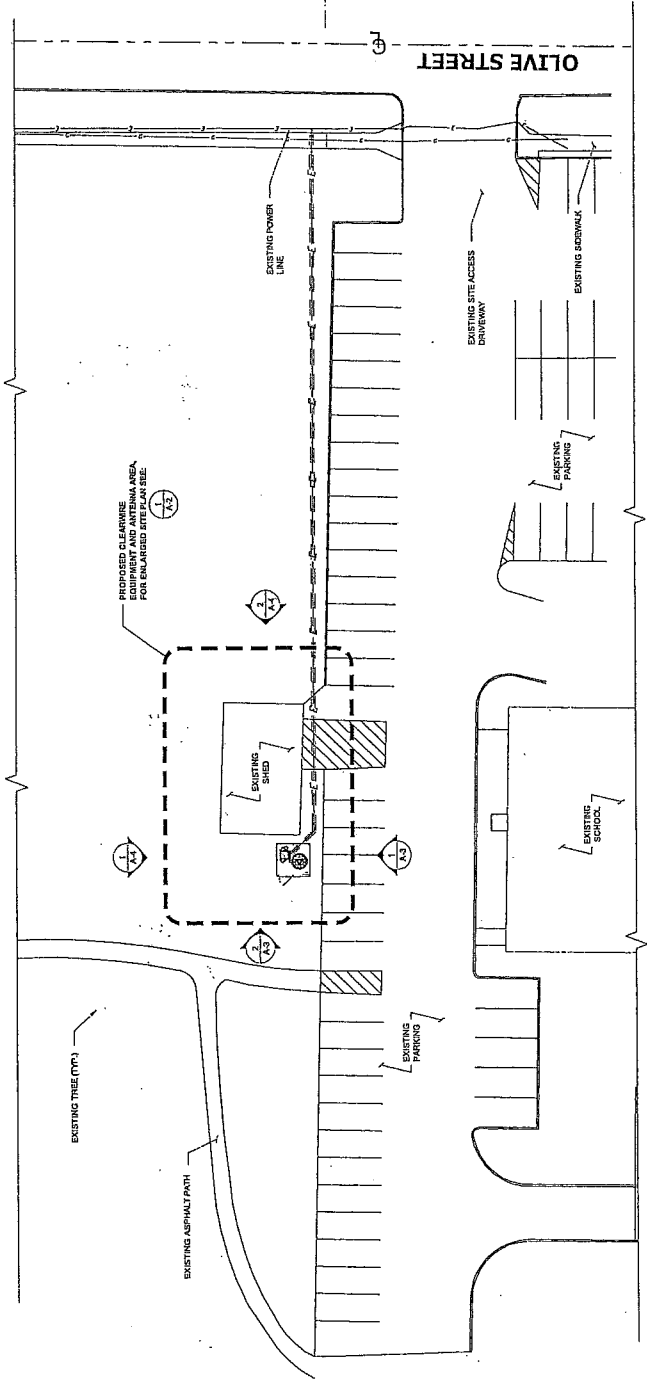
7/2/15

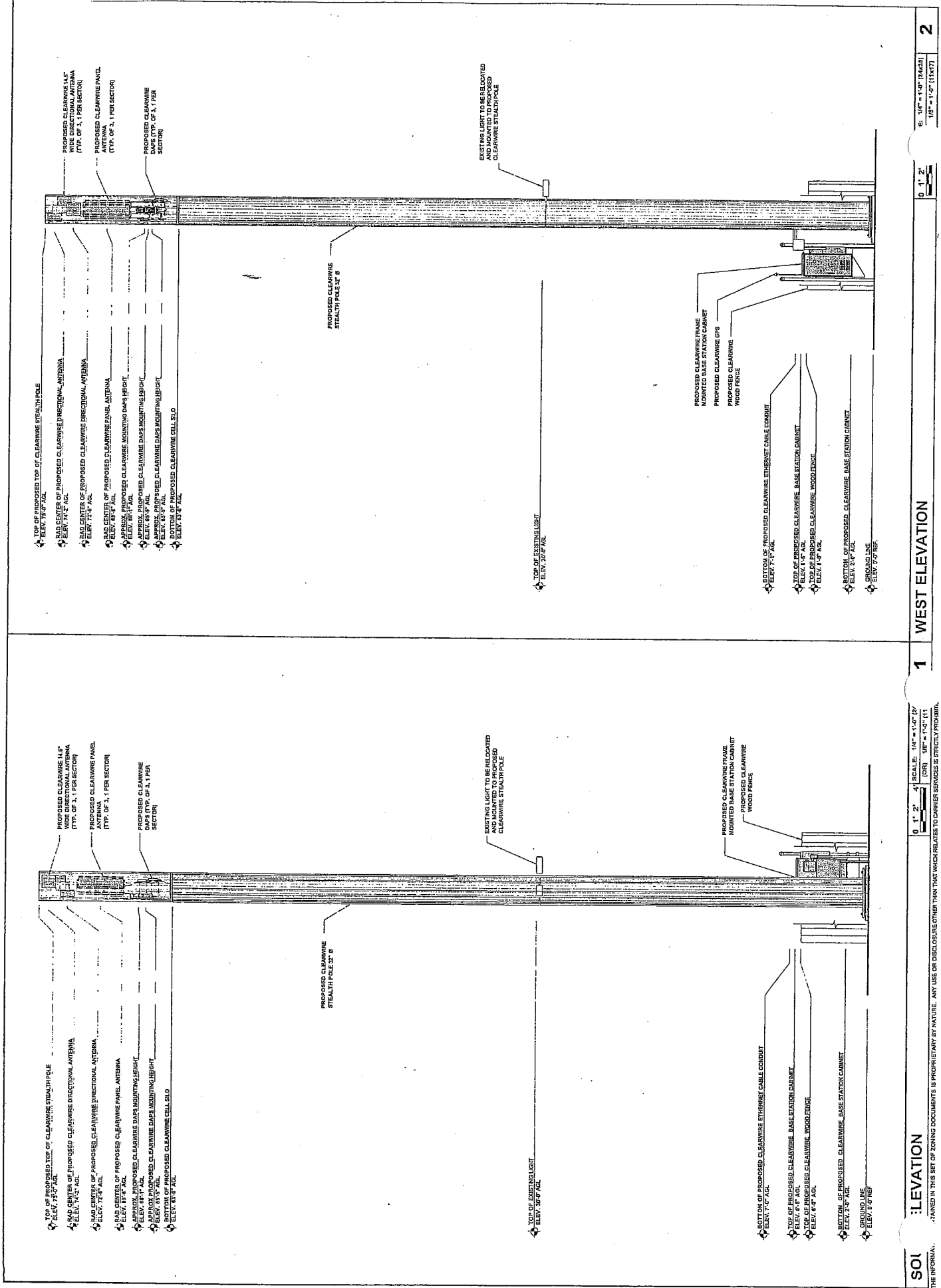


20' 0 10' 20' SCALE: 1" = 20'-0" (24x36) (OR) 1/2" = 20'-0" (11x17)

**SITE PLAN**

THE INFORMATION CONTAINED IN THIS SET OF ZONING DOCUMENTS IS PROPRIETARY BY NATURE. ANY USE OR DISCLOSURE OTHER THAN THAT WHICH RELATES TO CARRIER SERVICES IS STRICTLY PROHIBITED.





SOI

ELEVATION

0' 1' 2' 4' SCALE: 1/4" = 1'-0" (24") (OR) 1/8" = 1'-0" (12")  
 \*AINED IN THIS SET OF ZONING DOCUMENTS IS PROPRIETARY BY NATURE. ANY USE OR DISCLOSURE OTHER THAN THAT WHICH RELATES TO CARRIER SERVICES IS STRICTLY PROHIBITED.

1 WEST ELEVATION

0' 1' 2'

1/4" = 1'-0" (24") (OR) 1/8" = 1'-0" (12")

2



TO: Mayor, City Councilmembers, City Manager *WJ*  
FROM: Doug Vierzba, City Engineer *DV*  
SUBJECT: Adoption of Ordinance Restricting Parking on  
Main Street from Thrush Street to Avocet Street  
DATE: November 17, 2009

### **INTRODUCTION**

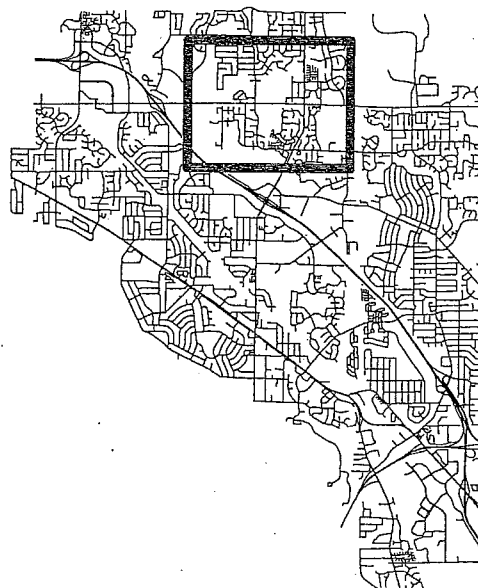
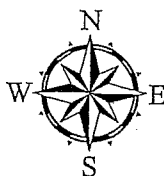
Anoka County is planning to improve Main Street in 2010 between Thrush Street and Avocet Street. Parking of vehicles must be prohibited as part of the project approval process. Council is requested to adopt the ordinance at this time.

### **DISCUSSION**

As part of the approval process for Main Street improvements, Anoka County requires parking restrictions on both sides of Main Street from Thrush Street to Avocet Street. Council introduced an ordinance restricting parking on Main Street on November 4, 2009.

### **RECOMMENDATION**

It is recommended that Council adopt the attached ordinance prohibiting parking on Main Street from Thrush Street to Avocet Street.





8

**ORDINANCE NO.**

**AN ORDINANCE RESTRICTING PARKING ON BOTH SIDES OF  
MAIN STREET NW FROM THRUSH STREET NW TO AVOCET STREET NW**

**The City of Coon Rapids does ordain:**

Section 1. There is hereby established a parking restriction on both sides of Main Street NW from Thrush Street NW to Avocet Street NW.

Section 2. The Public Works Director is authorized and directed to install appropriate signs to effectuate the purpose of this ordinance.

Introduced on the 4<sup>th</sup> day of November, 2009.

Adopted on the \_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Tim Howe, Mayor

ATTEST:

\_\_\_\_\_  
Joan A. Anderson, City Clerk









TO: Mayor, City Councilmembers, City Manager

FROM: Steve Gatlin, Director of Public Services

SUBJECT: Adoption of Ordinance Repealing Ordinance No. 1036 and Establishing Stop Signs on 98<sup>th</sup> Lane at Bluebird Street

DATE: November 17, 2009

**INTRODUCTION**

Mr. Milt Peters appeared at Open Mic on October 6, 2009. He offered comments based on staff's review and report on his September 15, 2009 Open Mic request for additional stop signs at the intersection of 98<sup>th</sup> Lane and Bluebird Street. Mr. Peters suggested that in lieu of a 4-way stop, we should consider removing stop signs on Bluebird Street and installing stop signs on 98<sup>th</sup> Lane. Council introduced an ordinance on November 4, 2009 repealing Ordinance No. 1036 and establishing stop signs on 98<sup>th</sup> Lane at Bluebird Street. Council is requested to adopt this ordinance at this time.

**DISCUSSION**

Mr. Milt Peters appeared at the October 6, 2009 Council meeting. He objected to the Traffic Review Committee's findings regarding a 4-way stop at the intersection of 98<sup>th</sup> Lane and Bluebird Street. He suggested that as an alternative to the current situation, consideration be given to removing stop signs on Bluebird Street and installing 2-way stop signs on 98<sup>th</sup> Lane.

Council discussed the issue in detail. It was first suggested that consideration may be given to a 4-way stop to avoid confusion. In final deliberations the matter was referred to the Safety Commission for review and comment and to the Traffic Review Committee for additional comments.

At its regular meeting on October 8, 2009 the Safety Commission reviewed the request. They recommended that stop signs be removed on Bluebird Street and new stop signs be installed on 98<sup>th</sup> Lane stopping traffic in the east and west directions. The Safety Commission felt that a 4-way stop was not warranted and should not be considered.

The Traffic Review Committee also reviewed this matter again. The Traffic Review Committee stands by its earlier recommendation to remove the stop signs on Bluebird Street and install new stop signs stopping traffic on 98<sup>th</sup> Lane in the east and west directions. Detailed traffic counts in the area were not done; however, based on staff review, 98<sup>th</sup> Lane carries significantly higher traffic volumes than Bluebird Street. The goal of the neighborhood was to provide a break in traffic for the section of 98<sup>th</sup> Lane which serves as a bypass for traffic on Coon Rapids Boulevard. The recommended stop signs on 98<sup>th</sup> Lane will provide the desired result for the neighborhood.

Mayor, City Councilmembers, City Manager  
Adoption of Ordinance Establishing Stop Signs on 98<sup>th</sup> Lane  
November 17, 2009  
Page 2

To facilitate the request it is necessary to repeal the ordinance establishing stop signs on Bluebird Street at 98<sup>th</sup> Lane and adopt an ordinance establishing stop signs on 98<sup>th</sup> Lane at Bluebird Street.

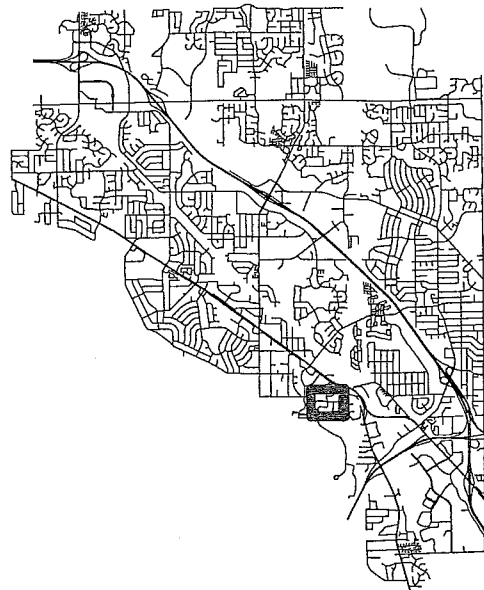
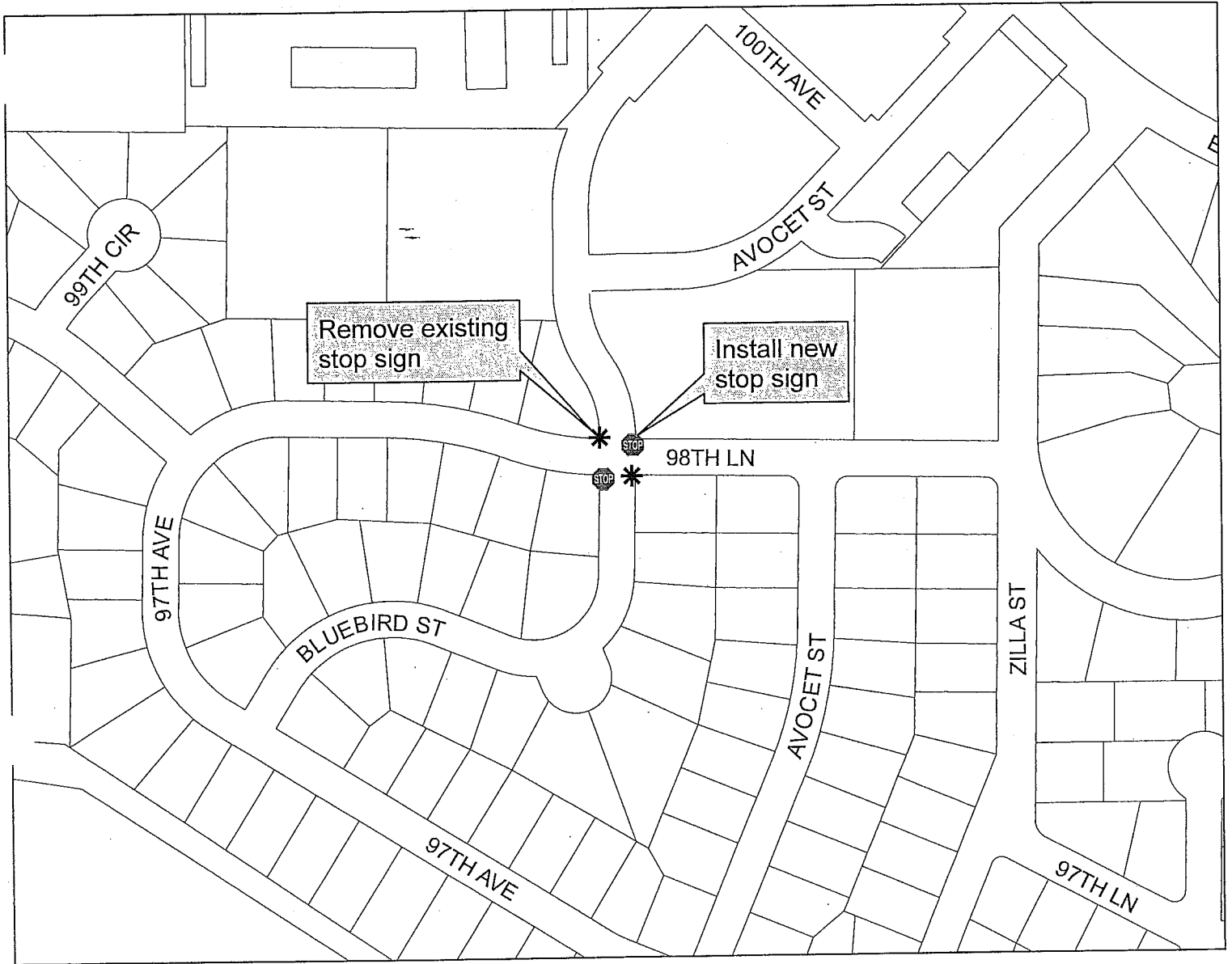
**BUDGET IMPACT**

This request has no major budget impact other than initial installation costs.

**RECOMMENDATION**

I recommend the Council adopt the attached ordinance repealing Ordinance No. 1036, authorizing stop signs on Bluebird Street at 98<sup>th</sup> Lane NW, and establishing stop signs on eastbound and westbound 98<sup>th</sup> Lane NW at Bluebird Street NW.

cc: Milt Peters



**ORDINANCE NO.**

**AN ORDINANCE REPEALING ORDINANCE NO. 1036 AND  
ESTABLISHING STOP SIGNS ON EASTBOUND AND WESTBOUND  
98<sup>TH</sup> LANE NW AT BLUEBIRD STREET NW**

**The City of Coon Rapids does ordain:**

Section 1. Ordinance No. 1036 allowing for the installation of stop signs on northbound and southbound Bluebird Street NW at 98<sup>th</sup> Lane NW is hereby repealed.

Section 1. The installation of stop signs is hereby authorized for stopping eastbound and westbound traffic on 98<sup>th</sup> Lane NW at Bluebird Street NW.

Section 2. The Director of Public Works is hereby authorized and directed to remove and install the appropriate signs to effectuate the purpose of this ordinance.

Introduced the 4<sup>th</sup> of November, 2009.

Adopted the \_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Tim Howe, Mayor

ATTEST:

\_\_\_\_\_  
Joan A. Anderson, City Clerk





TO: Mayor, City Councilmembers, City Manager *MB*

FROM: Matt Brown, *MB*  
Community Development Specialist *MB*

SUBJECT: Appeal of Staff Decision,  
SW Wold Construction on behalf of  
Builders Mortgage Company, LLC  
**Board of Adjustment and Appeals**  
**Case 09-4V**

DATE: November 17, 2009

## INTRODUCTION

The applicant has appealed Staff's interpretation of City Code Section 11-327, which requires that prior to issuance of a building permit a property owner file a performance bond, letter of credit, or cash escrow to ensure installation of site improvements. The Board of Adjustment and Appeals upheld Staff's decision and the applicant has appealed to the Council.

## DISCUSSION

The City Council approved a site plan for the 36-unit development in July 2006. Currently, six detached townhomes were constructed and sold to homeowners, four were completed and are for sale, another four are nearly complete, two foundations are in the ground, and the remaining 20 lots remain undeveloped. Except for the six owner-occupied units, all units and lots have either gone through foreclosure or are at various stages in the foreclosure process. A community building with an indoor pool, which was part of the site plan approval, has not been constructed. Several site improvements have not been completed, including the final lift of asphalt on private streets, street lights, fences, street name signs, and landscaping.

On June 3, 2009, the applicant submitted applications for building permits to complete construction of detached townhome units at 11000, 11035, and 11040 Dahlia Street and 2780 110<sup>th</sup> Avenue in the Villas on the Boulevard development. The units are now owned by Builders Mortgage Company, LLC, which acquired the lots through a foreclosure process. City Code Section 11-327 requires that "prior to the issuance of a building permit, the owner shall file a performance bond, irrevocable letter of credit, or place in cash escrow an amount equal to one and one-half times the estimate of the Community Development Director of the cost of the installation of all paving, curb and gutter, free-standing dumpster enclosures, free-standing lighting, landscaping, sidewalks, grading, screening and other non-building improvements required of the owner." In October 2006, the project's developer, TSM Development, submitted a letter of credit in the amount of \$165,000, which expired in October 2007. Development was still underway at that time. In the past, Staff typically verified that a security was in place only when building permit applications were received. Recently, Staff began estimating the cost of

site improvements to ensure adequacy of securities submitted by developers. In the past, Staff relied upon developers to estimate the cost of site improvements.

The following tables outline the remaining improvements required at Villas on the Boulevard.

<b>Common Area Improvements to be Completed, Villas on the Boulevard</b>	
<b>Item</b>	<b>Cost</b>
Trees/Shrubs	\$5,650.00
Final Lift of Asphalt, Private Street	\$32,000.00
Concrete Sidewalk	\$4,600.00
Fences	\$50,600.00
Gates	\$960.00
Street Lights	\$20,000.00
Street Name Signs	\$900.00
Community Building	\$300,000.00
<b>Total Estimated Cost of Improvements</b>	<b>\$414,710.00</b>
<b>Required Security/Escrow Amount (150%)</b>	<b>\$622,065.00</b>
<b>Per Unit Cost (divided by 36)</b>	<b>\$17,279.58</b>

<b>Individual Lot Improvements to be Completed, Villas on the Boulevard</b>	
<b>Item</b>	<b>Cost</b>
Trees	\$485.00
Sod/Topsoil	\$525.00
Underground Irrigation	\$675.00
<b>Total Estimated Cost of Improvements</b>	<b>\$1,685.00</b>
<b>Required Security/Escrow Amount (150%)</b>	<b>\$2,527.50</b>

The applicant applied for building permits to complete construction on four bank-owned units that are nearly complete. Because no security was in place to ensure installation of the remaining site improvements, Staff rejected the permit applications. Staff suggested to the applicant that if a single security for the entire development was not filed, the applicant could file a proportional security for each of the four units. Additional securities would be collected as other owners apply for building permits. The value of the remaining common area improvements (150% of cost) is \$17,279.58 per unit and the value of the improvements for each individual lot is \$2,527.50. The total escrow for each unit is \$19,807.08. The proposed community building accounts for a large proportion of the common area amount. Staff indicated that once the applicant submitted a site security, the City would process the building permit applications. Staff also suggested that alternatively, the applicant could work with the homeowners' association to apply for a site plan revision to approve a less costly common area

amenity. Staff has contacted the various property owners in order to help coordinate a solution. All but two of the vacant lots are in a redemption period and will likely be owned by First Minnesota Bank next year. After that occurs, it may become easier to coordinate the project's completion.

The applicant appealed Staff's decision upon rejection of the building permit applications. City Code Section 11-336 allows appeals to the Board of Adjustment and Appeals "concerning interpretation or administration of this Title may be taken by any person aggrieved by any decision of any City staff personnel."

In its appeal, the applicant makes several assertions:

1. *A substantial portion of the escrow demanded is for the purpose of improvements to Outlot A and Outlot B Villas on the Boulevard. These outlots are not owned by the Applicant nor any affiliate of the Applicant.*

City Code Section 11-327 references the property owner, and not the project's developer. Builders' Mortgage Company owns the four properties for which it applied for building permits as well as a proportional share of the homeowners' association. While the applicant does not hold fee title to the common areas of the development (Outlots A and B), it belongs to a homeowners' association that has an interest in the property. Outlot B is owned by the Villas on the Boulevard Homeowners' Association. While TSM Development still holds title to Outlot A, the location of the proposed community building, the declarations for the common-interest community require its transfer to the homeowners' association. Because these declarations are recorded with each of the four lots owned by Builders' Mortgage, the applicant has an interest in the outlot.

2. *The City contracted through its Security Agreement for rights against the "Owner" and has failed to pursue its contracted rights. Neither the Applicant nor any affiliate of the Applicant is a party to the Security Agreement.*

While TSM Development filed a letter of credit that expired in 2007, development was still underway at that time and the City had no reason to draw upon it. Earlier in 2009, TSM indicated that it no longer had the capacity to post a site security. City Code Section 11-327 requires that a security be posted prior to issuance of building permits. Because no site security is in place, the City cannot issue permits for properties within the development, regardless of their ownership.

3. *The City has not imposed the same requirement for issuance of other building permits for improvements to individual lots within the plat Villas on the Boulevard.*

The escrow requirement imposed on the applicant will be imposed on all other property owners within the development upon application for building permits.

4. *The City failed to exercise its rights under the Security Agreement and/or the Letter of Credit issued by the Developer to assure performance.*

In October 2006, the project's developer, TSM Development, submitted a letter of credit in the amount of \$165,000, which expired in October 2007. Development was still underway at that time. At that time, Staff typically verified that a security was in place only when building permit applications were received. A letter of credit, performance bond, or cash escrow must be reestablished. TSM Development indicated that it no longer has the capacity to post a security.

5. *The City failed to give notice, actual or constructive that an escrow requirement of \$17,279.58 would be imposed as a condition for issuance of each building permit.*

City Staff maintained ongoing communication with the applicant and its attorney regarding the escrow requirement after the building permit applications were received. This included telephone communication with the applicant on June 4, 2009 and email communication with its attorney on June 30, July 2, July 15, July 16, and July 27. The applications were formally rejected on August 25, 2009 because the applicant failed to post a site security or coordinate with the homeowners' association to post a security.

6. *The City did not, within 60 days, accept or reject the building permit applications submitted.*

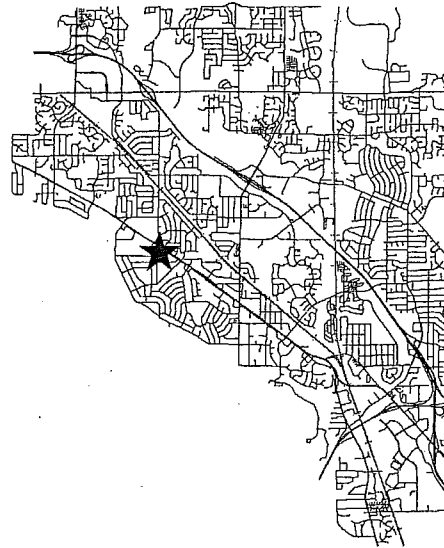
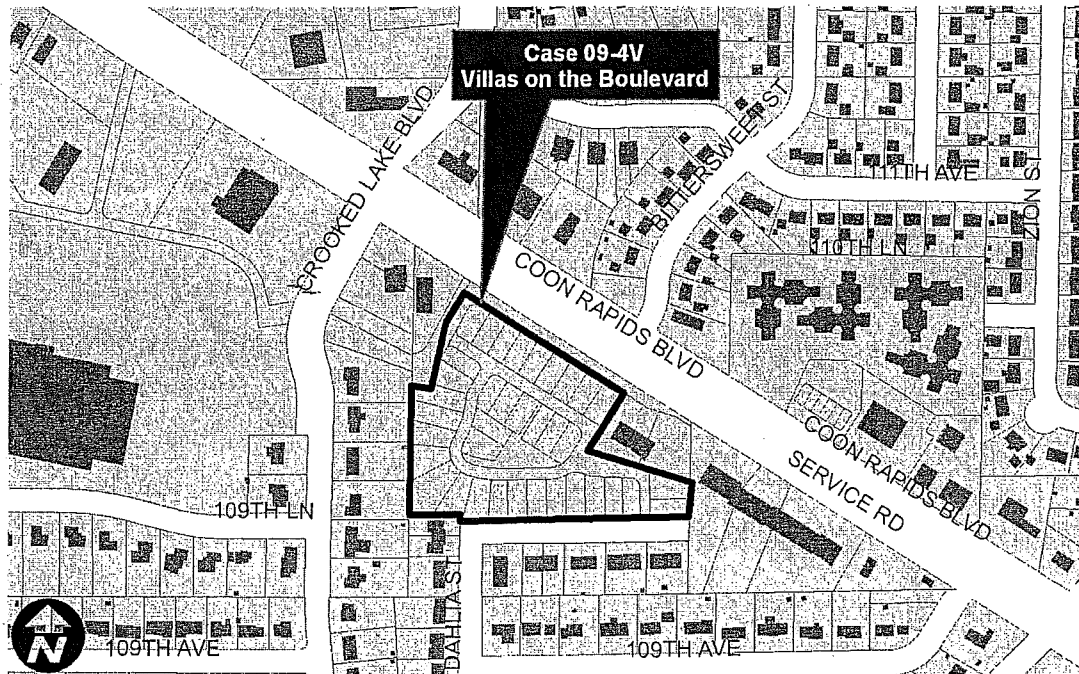
State Statutes require agencies to approve or deny certain types of zoning and environmental applications within 60 days. The Minnesota Court of Appeals in *Advantage Capital Management v. City of Northfield* (2003) ruled that the 60-day rule does not apply to building permit applications. Staff maintained communication with the applicant regarding the status of the permit applications after submission. The applications were ultimately rejected after the applicant failed to submit the required security.

### **RECOMMENDATION**

In Case 09-4V, **affirm** the October 1, 2009 decision of the Board of Adjustment and Appeals, based on the following findings:

1. The 60 day rule under Minn. Statute 15.99 does not apply to the issuance of building permits.

2. City Code Section 11-327 requires that a property owner must file a letter of credit, performance bond, or cash escrow in the amount of 150% of the cost of site improvements prior to issuance of a building permit.
3. On June 3, 2009, the Applicant submitted applications for building permits to complete construction of detached townhome units at 11000, 11035, and 11040 Dahlia Street and 2780 110<sup>th</sup> Avenue NW in the Villas on the Boulevard development.
4. City Staff provided notice to Applicant regarding requirement of City Code Section 11-327 beginning as early as June 4, 2009.
5. All property owners in the Villas on the Boulevard development have an interest in Outlot A, Villas on the Boulevard, which is to be owned by the homeowners' association.
6. Applicant is allowed to either submit a security for the entire development costs or Applicant may file security in an amount proportionate to their current property interests.
7. Because a letter of credit, performance bond, or cash escrow is not in place, the City cannot issue building permits for the properties.



# Property Ownership, Villas on the Boulevard

- VILLAS ON THE BOULEVARD**  
11011
- OWNER**
- 21ST CENTURY BANK
  - BOULEVARD BUILDERS & DEVELOPERS LLC
  - BUILDERS MORTGAGE COMPANY LLC
  - CHRISTENSON LYLE 2669
  - FIRST MINNESOTA BANK
  - JENNI PATRICIA
  - NELSON JANE
  - PROSPERAN BANK
  - REICHERT CHARLES
  - TSM DEVELOPMENT INC
  - VILLAS ON THE BLVD HOMEOWNERS ASSOC
  - WHITING DUANE

-Redemption period for 18 lots owned by TSM Development expires January 12, 2010.  
 -6 units currently owner-occupied  
 -4 bank-owned units completed  
 -4 bank-owned units nearly complete







# APPLICATION FOR APPEAL TO CITY COUNCIL

**CASE NUMBER:** 09-04V, Appeal of Staff Interpretation, Villas on the Boulevard

**DATE FILED:** October 27, 2009

**APPEAL SET FOR:** Nov. 17 2009



This form must be received at City Hall by 4:30 on October 27, 2009 for this Appeal to be considered.

(Being postmarked by this date is not adequate. The form must be at City Hall.)

---

**APPLICANT:** SW Wold Construction, Inc., general contractor, on behalf of Builders Mortgage Company, LLC

**ATTORNEYS FOR APPLICANT:** Gordon L. Jensen and Stephen M. Ringquist

**ADDRESS:** 8525 Edinbrook Crossing, Suite 201, Brooklyn Park, MN 55443

**PHONE:** 763-424-8811

I formally request that action on Case Number 09-04V be appealed to the Coon Rapids City Council for the following reason(s):

## ISSUE

Can the City of Coon Rapids ("City") under current City Code and Minnesota State and Federal law impose escrow requirement on the Applicant as a condition precedent to issuance of a building permit to the Applicant for the purpose of completing improvements to four (4) residential dwellings within the plat "Villas on the Boulevard" if:

1. A substantial portion of the escrow demanded is for the purpose of improvements to Outlot A and Outlot B Villas on the Boulevard. These outlots are not owned by the Applicant nor any affiliate of the Applicant.



- D
2. The City contracted through its Security Agreement for rights against the "Owner" and has failed to pursue its contracted rights. Neither the Applicant nor any affiliate of the Applicant is a party to the Security Agreement.
  3. The City has not imposed the same requirement for issuance of other building permits for improvements to individual lots within the plat Villas on the Boulevard.
  4. The City failed to exercise its rights under the Security Agreement and/or the Letter of Credit issued by the Developer to assure performance.
  5. The City failed to give notice, actual or constructive that an escrow requirement of \$17,279.58 for "Off-Site" improvements would be imposed as a condition for issuance of each building permit.
  6. The City did not, within sixty (60) days accept or reject the building permit applications submitted.

### FACTS

In 2006 TSM Development, Inc., ("TSM"), the owner and developer of Villas on the Boulevard, applied for Site Plan approval from the City. On July 26, 2006 the City considered TSM's appeal regarding Resolution 06-61 of site plan PC 06-39 and approved the site plan of TSM for the development. As part of the approval for its development, TSM signed a Security Agreement with the City whereby TSM contracted with the City:

"In the event the Owner fails to complete the necessary improvements, the Owner grants to the City a right-of-entry upon the property for the purposes of completing the improvements. If the City takes such action, the Owner hereby authorizes and agrees to reimburse the City for all costs incurred by the City in completing the improvements from the proceeds of the letter of credit filed with the City."

Pursuant to the Security Agreement, TSM provided an Irrevocable Letter of Credit No. 56404 to the City of Coon Rapids on October 12, 2006 in the amount of \$165,000.00. The Letter of Credit expired in October 12, 2007 and was not enforced, renewed, extended or replaced.

The development, Villas on the Boulevard, is a planned community consisting of thirty-six (36) individual lots intended for residential dwellings and two (2) outlots. Outlot A is, according to the site plan approved by the City, to be improved by its Owner (TSM) for a community building and an indoor pool. Outlot B is the private roadway providing access to individual lots and is owned by Villas on the Boulevard Homeowners Association. Although development commenced in 2006, with the exception of six (6) owner-occupied dwellings, a majority of the lots remain vacant and have been foreclosed or are at various stages of the foreclosure process (see **Exhibit A** for current ownership of lots within Villas on the Boulevard). Although required by the Declaration creating Common Interest Community No. 263 and Minn. Stat. Chapter 515B governing planned communities, the Declarant failed to comply with its obligations. TSM failed to construct the community building and indoor pool; failed to convey Outlot A to Villas on the Boulevard Homeowners Association, a non-profit corporation; failed to provide improvements to the common elements of the community as required by the site plan; failed to create a functioning association for maintenance of the planned community. Particularly germane to the issue under consideration is the fact that TSM failed to convey Outlot A to the association and is the current owner of Outlot A which is the site for construction of the community building and indoor pool.

10

The lots for which the applicant seeks reissuance of building permits were conveyed to Boulevard Builders and Developers, LLC and on or about October 18, 2006 and Builders Mortgage Company, LLC placed a first mortgage against the individual lots, foreclosed its Mortgage, and obtained a Sheriff's Certificate of Sale on March 24, 2009 becoming the owner of the following lots:

**Lots 2, 6, 7, Block 2, and Lot 3, Block 3, Villas on the Boulevard also known as 11035 Dahlia Street NW, 11040 Dahlia St. NW, 2780 110<sup>th</sup> Ave, 11000 Dahlia St. NW.**

On June 6, 2009, Chris Wold of SW Wold Construction, Inc., general contractor, on behalf of Builders Mortgage Company, LLC ("BMC") applied to the City of Coon Rapids for a Building Permit (CR103518) to finish flooring and c.o. for 11035 Dahlia Street NW., for a Building Permit (CR105065) for 11040 Dahlia St. NW to finish painting c.o., for a Building Permit (CR103538) for 2780 110<sup>th</sup> Ave to finish painting to c.o., for a Building Permit (CR102597) for 11000 Dahlia St. NW to finish from painting to c.o.. In addition to the above applications each had a mechanical and plumbing permit application attached to each. **It is important to note that building permits (without escrow requirements) were previously issued for construction of improvement to the stage depicted in the photos attached as Exhibits B1-B4.**

The City has demanded that Applicant escrow for improvements to each individual lot in the amount of \$2,527.50 per unit to assure installation of the following "On-Site" improvements: trees, sod/top soil, and underground irrigation. The Applicant acknowledges that this is a customary and ordinary responsibility for an Owner of a lot for "On-Site" improvements and is agreeable to issuing the requested security for each lot for which a building permit is requested. Escrow for the remaining "Off-Site"

improvements which were the responsibility of TSM in the amount of \$17,279.58 per unit is not the responsibility of the Applicant and/or BMC. The itemization of "Off-Site" improvements are as follows:

<b>Common Area Improvements to be Completed, Villas on the Boulevard</b>	
<b>Item</b>	<b>Cost</b>
Trees/Shrubs	\$5,650.00
Final Lift of Asphalt, Private Street	\$32,000.00
Concrete Sidewalk	\$4,600.00
Fences	\$50,600.00
Gates	\$960.00
Street Lights	\$20,000.00
Street Name Signs	\$900.00
Community Building	\$300,000.00
<b>Total Estimated Cost of Improvements</b>	<b>\$414,710.00</b>
<b>Required Security/Escrow Amount (150%)</b>	<b>\$622,065.00</b>
<b>Per Unit Cost (divided by 36)</b>	<b>\$17,279.58</b>

On August 26, 2009, more than sixty days after the request by the Applicant, Matt Brown, City of Coon Rapids Development Director, informed the Applicant that the permit applications were rejected and that a letter would be sent to the Applicant explaining the reasons for rejection.

#### **LAW AND REASONING**

Municipal corporation's requirement for obtaining building permits and method of enforcing such requirements may not be arbitrary, unreasonable or discriminatory. City of Hutchinson v. Otto, 235 N.W.2d 604 (Minn. 1975). It is the position of the Applicant that the actions of the City in denying the Applicant's request for building permits to finish four (4) homes, each of which is within three (3) weeks of completion and each of which had a previous building permit issued without imposition of the now requested escrow for "Off-Site" improvements violates these standards.

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In reviewing the documentation applicable to City approval of the subdivision and specifically the Security Agreement it is noted that the initial escrow requirement for TSM was deposit of a letter of credit in the amount of \$165,000.00. This is memorialized in the provision of the Security Agreement reading as follows:

“The cost of the above improvements is estimated to be \$110,000.00. A letter of credit in the amount of \$165,000.00 is herewith filed with the City by the Owner as assurance that the Owner will complete the required improvements.”

The Security Agreement further provides:

“In the event the Owner fails to complete the necessary improvements, the Owner grants to the City a right of entry upon the property for the purpose of completing the improvements.”

The costs of improvements are estimated in the Security Agreement to be \$110,000.00 and the escrow required was \$165,000.00. The amount demanded from the City for issuance of individual building permits at this time for the Applicant are based upon an improvement cost of \$414,710.00 and escrow of \$622,065.00. You will note that the Security Agreement and escrows required of TSM did not include a community building and indoor pool with a cost estimate of \$300,000.00. Once again, the City accepted and at one time held sufficient security to assure completion of the “Off-Site” improvements (exclusive to the community building and indoor pool) and failed to enforce its contractual rights. It is inappropriate at this time to seek to rectify the lack of security by demanding that the Applicant provide security at the rate of \$17,279.58 per lot.

In requesting that the Applicant provide security for “Off-Site” improvements to Outlot A and Outlot B Villas on the Boulevard the City is attempting to require the Applicant to deposit funds for improvements to be made on properties which are not

owned by the Applicant and/or BMC nor will ever be owned by the Applicant and/or BMC. Although the Declaration which created a planned unit community, grants a right of access to its individual lots over and across Outlot B and lot ownership creates an obligation for maintenance costs through assessment, Outlot B is owned by the homeowners association. Any capital improvements to Outlot B must be assessed specifically through the homeowners association or directly assessed by the City in accordance with the authority granted by the Security Agreement:

“In the event the Owner fails to complete the necessary improvements, the Owner grants the City a right of entry upon the Property for the purpose of completing the improvements...”

Outlot A is more problematic. TSM Development, Inc., the Owner named in the Security Agreement and the current Owner of Outlot A, is the party responsible for common element improvements and although TSM has not filed bankruptcy and is still the fee owner of Outlot A there can be no expectation that it will voluntarily fulfill its responsibility to the City and/or owners of the individual lots within the development. The Applicant has no right and certainly no obligation to make the improvements to Outlot A owned by TSM including specifically construction of community building and indoor pool nor does the Applicant, BMC or the homeowners association have the right to make improvements within Outlot A. They do not own it. Only the City in exercise of its rights under the Security Agreement has the right to do so and upon completion seek reimbursement from TSM.

A constitutional issue clearly arises if the City enforces the deposit requirements against the Applicant and/or BMC. Six (6) individual owners are occupying residential dwellings within the development. Neither these individuals nor their individual lots



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have been charged for improvements which are now demanded of the Applicant. If any of these individual owners make application for a permit for work to be done on their home will the City require them to deposit \$17,279.50 in escrow as a condition precedent to obtaining a permit to replace their air conditioner, furnace, modify plumbing or electrical service or such other activity as may require a permit? The Applicant and BMC demand equal protection under the law.

The Applicant as a builder on behalf of BMC is seeking to obtain the building permits for the purpose of completing for market the residential dwellings depicted on **Exhibits B1-B4**. These residential dwellings are vacant and depreciating in value. As noted, the Applicant is willing to escrow for individual "On-Site" improvements for individual lots in accordance with the City estimate. The Applicant and BMC as Owner of the individual lots will not and can not absorb and the marketplace will not justify an additional \$17,279.58 set aside for improvements on property owned by third parties and for improvements (clubhouse and indoor pool) which in all probability will never be constructed placing these lots (and all vacant lots within the development) at a cost disadvantage and unmarketable. This can not be accepted in the current economic downturn and the entire project will remain unfinished for years..

City Code Section 11-327 is being misapplied in the instance at hand. Specifically, this Section requires that prior to issuance of a building permit a property owner must file a performance bond, letter of credit, or cash escrow to ensure installation of site improvements. The "site" in this case is the four (4) residential dwellings owned by BMC and for which the Applicant has requested building permits. "Owner" for the purpose of these four (4) residential lots is BMC. "Owner" for the purpose of Outlot A is

TSM. "Owner" for the purpose of Outlot B is Villas on the Boulevard Homeowners Association". The fact that City Code Section 11-327 should not be applied to the Applicant and BMC in regard to "Off-Site" improvements is clear from the itemization contained in that Section:..."paving, curb and gutter, free standing dumpster enclosures, free standing lighting, landscaping, sidewalks, grating, screening and other non-building improvements required of the Owner."

The City failed to enforce a previous letter of credit (attached as **Exhibit C**) against TSM and is now asserting the right to enforce those rights against the Applicant as identified in Matt Brown's August 26, 2009 letter. Failure of the City to enforce its rights against TSM does not create a right enforceable against the Applicant and/or BMC. The proposed action by the City is arbitrary, capricious, and is an abuse of City Code Section 11-327.

The Applicant further asserts that the City failed to provide actual or constructive notice to BMC and/or the Applicant regarding the now imposed building permit escrow requirements. The Security Agreement was not recorded. The City Code does not and can not be construed to authorize an arbitrary increase in escrow amounts without notice (records at City Hall would have reflected an escrow requirement of \$165,000.00 fully funded). The current request is an escrow of \$622,065.00. The City Code does not require an Owner to pay for improvements on another owner's property nor can the City create a requirement for the Applicant to pay for improvements to property it does not own and to which it has no access. Neither the Applicant nor BMC is an Assignee of the rights and has not accepted the obligation of the Declarant. The City can not ignore its previous contracted rights of the Security Agreement with TSM (Owner) for the purpose

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of pursuing them against BMC and the Applicant. The City contracted for right of re-entry and a right for reimbursement and received those rights from TSM. At this later date it can not be allowed to withhold a building permit from the Applicant as an alternate remedy.

In filing this Appeal, the Applicant understands that the City Staff disagrees and takes issue with the allegation on the part of the Applicant that the "Sixty (60) Day Rule" applies. The Applicant acknowledges the position of City Staff; however, for the purpose of preserving and establishing a record, the Applicant asserts on appeal that the City Staff must issue the building permits requested for failure of the Staff to comply with the "Sixty (60) Day Rule". Minn. Stat. 15.99 provides in part:

An agency must approve or deny within 60 days a written request for...a permit, license, or other governmental approval of an action. Failure of an agency to deny a request within 60 days is approval of the request.

The City staff did not reject the Applicant's permit request until 60 days after the request was made. The City cannot argue that the permit applications are now rejected due to City Code Section 11-327 as referenced in Matt Brown's letter to the Applicant.

### CONCLUSION

The findings by the City's Board of Adjustments and Appeals decision adopted does not bind the City Council. The Board, although it appeared appreciative of the issues raised, noted at the hearing that modifying the City Staff's interpretation of the Code at the hearing was beyond the scope of its authority. In voting to uphold the decision of the City Staff, the record reflects that an appeal to the City Council was required because only the Council had authority to modify an interpretation of the City

Code by City Staff. Therefore, this Appeal requests a determination by the City Council that the City's imposition of the "Off-Site" improvement escrow on the Applicant as a condition precedent to issuing the four (4) building permits for which application has been made be modified and interpreted to require only deposit of an escrow for the "On-Site" improvements identified above in the amount of \$1,685.00, that the City accept an escrow of \$2,527.50 per lot and that the City Staff be directed to issue the four (4) building permits based upon the application.

Failure of the City to follow this interpretation of its Code and the contractual documents executed would constitute selective enforcement against the Applicant and violate its constitutional rights of equal protection.

Submitted this 27<sup>th</sup> day of October, 2009.

By: Gordon L. Jensen

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## COON RAPIDS BOARD OF ADJUSTMENT AND APPEALS MEETING MINUTES OF OCTOBER 1, 2009

The regular meeting of the Coon Rapids Board of Adjustment and Appeals was called to order by Chairman Wessling at 6:30 p.m. on Thursday, October 1, 2009, in the Council Chambers.

Members Present: Chairman Gary Wessling, Commissioners Jeanette Rosand, Teri Spano-Madden and Trish Thorup

Members Absent: Commissioner Vande Linde

Staff Present: Housing and Zoning Coordinator Cheryl Bennett, Assistant City Attorney David Brodie and Community Development Specialist Matt Brown

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### CALL TO ORDER

Chairman Wessling called the meeting to order at 6:30 p.m.

### APPROVAL OF THE MAY 7, 2009, MEETING MINUTES

MOTION BY COMMISSIONER SPANO-MADDEN, SECOND BY COMMISSIONER ROSAND, TO APPROVE THE MAY 7, 2009, MEETING MINUTES AS PRESENTED. THE MOTION PASSED UNANIMOUSLY.

1. CASE 09-04V – SW WOLD CONSTRUCTION ON BEHALF OF BUILDERS MORTGAGE COMPANY LLC – VILLAS ON THE BOULEVARD – 110<sup>TH</sup> AND DAHLIA STREET (FORMER COON RAPIDS CHRYSLER SITE) – APPEAL STAFF INTERPRETATION OF CITY CODE.

Chairman Wessling asked staff to review the case.

Mr. Brown commented that he could review the background and is available for questions.

Chairman Wessling questioned the petitioner's statements that they did not get communication of Code requirements when there were seven communications including the application. Mr. Brown stated that the petitioner is referencing that they believe the 60-day rule applies although the State Court of Appeals has determined that it does not apply to building permits. He stated that if a building permit application is received and if there is a concern, then there will be communication between staff and the applicant. He stated this is to resolve any issues instead of denying the application and requiring a reapplication. He stated that the petitioner disagreed with staff's City Code interpretation that the letter of credit needed to be in place in order for the building permit to be issued.

Chairman Wessling stated that Code Section 11-327 has been on the books since 1972 and is straightforward. He expressed his concern with the issue raised regarding the Constitution. Mr. Brown stated the petitioner is saying that the City is imposing the requirement on the four lots at this time but not on other lots. He explained that right now the escrow or letter of credit is imposed on those four lots but it will apply to all other lots if a builder applies for a permit. He explained that this is why they have divided up the costs between 36 lots as each property owner is responsible for the costs associated with the homeowners' association.

Chairman Wessling stated that the association has a responsibility to the homeowners who pay them a fee. Mr. Brown stated that in this situation the homeowners' association has been controlled by the original developer who is not able financially to complete the improvements or submit an escrow for them to be completed, making this a unique situation. He stated that many of the lots in the development are in the foreclosure process. He stated that the association will be controlled by the bank that made a development loan as the properties go through the foreclosure process.

Chairman Wessling questioned if the association is separate from the developer. Mr. Brown stated that the association is established as a nonprofit corporation and registered with the state.

Chairman Wessling asked if the association fees are divided between each lot in the development and not just between the four lots. Mr. Brown stated that the cost of the escrow is proportional and is divided between all 36 lots. He explained that the escrow cost reflects the proposed common building that was approved in the original site plan. He stated that a revised site plan can be requested that could have a different common area amenity. This would allow the escrow amount to be decreased.

Chairman Wessling questioned if the association decided to amend their site plan and change the community building then would the costs go down. Mr. Brown stated that there needs to be a common area in the development and that all other costs will remain the same.

Commissioner Rosand asked about the comment that staff recently began estimating costs for improvements. She asked for this timeline. Mr. Brown stated that the costs of the improvements were added up when the petitioner applied for building permits. He explained that in the past the developer's estimate for the improvement costs would have been taken at their word but the City has begun looking to see whether these estimates would be sufficient. He explained that the tables noted identify the site plans for what needs to be completed.

Commissioner Rosand asked when the applications were formally rejected. She asked what the communications leading up to that regarded. Mr. Brown stated that on June 4, 2009, the discussion began about site security and August 25 is when the application was returned from the City with a letter stating why the applications were rejected.

Attorney Gordon Jensen of Jensen, Sondrall and Persellin, P.A. stated that he would like to offer some clarification to address the questions that were asked. He presented a handout showing the properties that building permits have been applied for. He questioned whether the report shows that the permit is for finishing four homes. He stated that there were building permits issued which have expired. He explained that the homes were built to Code under those permits. He reported that his client took over the property and is seeking a permit to complete these four homes. He explained that TSM Development made a security agreement with the City for a \$165,000 escrow. He stated that developer submitted a \$165,000 letter of credit. He stated that the letter of credit was allowed to expire but that there is still a security agreement with the developer. He explained that there is no collateral involved. He stated that the packet shows that TSM Development Inc. has filed bankruptcy but, as of this afternoon, this is not accurate and they have not filed bankruptcy. He stated that there is an enforceable right under the security

agreement. He stated the developer complied with what the City requested. He stated that they are not working on vacant lots but on four lots with incomplete houses.

Attorney Jensen explained that there is a homeowners' association that owns the streets but it does not own the property that the community building will be constructed on. He explained that the community building is to be built on property that is owned under the name of TSM Development. He stated that his client is being asked to put up an escrow on property that they do not own nor have available to them to construct upon. The homeowners' association does not own Outlot A.

Attorney Jensen stated that, when reviewing the City ordinances regarding putting up collateral and escrow for lot improvements, he would expect to find that similar escrows must have been required when the original permits were issued for the four houses. He commented that he cannot find a record of this or a record of the money involved for escrow. He proposed that they escrow for site improvements on the four lots. He stated the ordinance for escrow is directed to the property owner. He explained it will take around three weeks to finish the homes.

Attorney Jensen stated that the 60-day ruling is a Court of Appeals case. He stated they question whether the 60-day rule formalities apply to a building permit. He explained that staff has been very responsive. He stated that a constitutional issue is being considered because six of the properties were developed without the escrow in place. He stated that there is not an opportunity to levy money against those lots. He stated the homeowners' association cannot amend the site plan. He explained that TSM Development has not and will not turn over the association as it is locked in up litigation with the lender who is foreclosing on other lots. He explained the lender is not claiming rights that would allow the addition of the units and the project is going to sit. He stated his client has investments in this construction and wants to complete and sell those properties for specific parties. He suggested that the ordinance has been misapplied for these lots because the letter of credit was there although it has not been renewed. He stated their lender is suffering from this. He stated the lender with vacant lots will be in a holding pattern for years. He stated his client has money invested and is now being asked to escrow \$80,000 in order to complete these houses before selling them. He stated the original developer has financial issues and has inappropriately handled the homeowners' association that does not exist. He explained that the homeowners' association has no authority, and there is no control or voting rights for the residents already in the development. There is no opportunity to sell the homes at this point. He stated in order to resolve the situation they would like to get new building permits for the four homes so they can be completed. He proposed that they pay an escrow only on the property that they own which are the four houses.

Commissioner Spano-Madden asked what amount of escrow they would propose. Attorney Jensen stated that the items in the City's memo show the common area they do not own and never have and never will. He stated they will be a member of the association and be obligated to pay dues for the community area. He stated they would escrow for the other improvements for the individual lots that are to be completed. He stated that it is his understanding the irrigation is installed for the four homes and, in the picture, the trees have been planted.

Chairman Wessling stated that he could not tell during his drive-by if the irrigation is in. He explained that the streets are not completed and the streetlights are not in. Attorney Jensen stated

they are not allowed to put these in yet. He explained there is an association of record, which is not a functioning association and is not acting on their behalf. He stated that in a foreclosure, TSM has the right and obligation to finish the project and it does not extend to the lender or developer.

Commissioner Spano-Madden asked why they only own four houses. Attorney Jensen stated that TSM made a loan with another contractor for the four houses. He explained that the builder was not able to complete the houses. This resulted in Builders Mortgage taking back the four lots and then Builders Mortgage arranged for another builder to complete the houses. This builder made an application to the City for renewed building permits. He stated that the builder was told by the City that the permit would be issued for \$20,000 escrow per house totaling \$80,000. He explained that it is not permitted or required by the ordinance to escrow for items that belong on someone else's property.

Commissioner Thorup asked who the fee owner of title is for the four properties. Attorney Jensen stated it is Builders Mortgage Company, LLC.

Commissioner Thorup asked how they could circumvent the homeowners' association fee and involvement in the properties. Attorney Jensen stated that the homeowners' association was not functioning at the time. He stated that when the bank took back the four properties from the original builder they were obligated to pay six months of association fees, which are for capital improvements from before the redemption period expired.

Chair Wessling asked what happened to the original escrow for these four lots. Mr. Brown stated that the original letter of credit submitted by TSM Development for the whole development was put up in 2006. He explained that City Code requires this to be an irrevocable letter of credit and it expired in 2007. He stated that when building permits were applied for, staff confirmed the letter of credit was expired. He reported there was a considerable amount of time where no activity took place on the development.

Chairman Wessling asked who is responsible to keep up the letter of credit. Mr. Brown stated it is the developer's responsibility to keep up the letter of credit and staff confirms it when a permit is applied for. He stated that the number of years the development has stretched out over makes this an unusual situation.

Commissioner Rosand confirmed that the houses originally had building permits after the letter of credit was received. She asked if building permits expire. Mr. Brown stated they expire in six months when no work is completed and a new permit has to be applied for.

Chairman Wessling stated the building permit and letter of credit were expired. He suggested that the escrow should have been added in to the housing costs when the applicant bought the property. Attorney Jensen stated that there is no development agreement on file to look at with the county. He stated that they looked for a security agreement and letter of credit for \$165,000. He stated they did not intend to work from the permit by the other builder. He asked if the other builders were asked to put up an escrow and said this information was not on record until the property was foreclosed on.



Commissioner Spano-Madden asked if there is a way for this ever to be resolved and repackaged over time so that the community building would not be required. Attorney Jensen explained there is Steve Schmidt and TSM Development that is now functioning as a declarant under the Common Interest Community Act for the association but there is no functioning homeowners' association.

Mr. Brown stated the homeowners have been making payments to the homeowners' association for the TSM builder on a monthly basis for common area maintenance only. Attorney Jensen commented that he understands this amounts to \$50 or \$75 a month but it does not include money toward the improvements. He explained that the cost cannot be passed on to the homeowners.

Ms. Bennett stated that it is expected the homeowners paid toward a community area amenity that was to be developed at a later date.

Attorney Jensen stated that the homeowners' association will start to function, likely, between five and ten years from now because of the pending litigation and the housing market. He stated that the builder who owns four houses cannot be held responsible for a common building that they do not own.

Chairman Wessling asked staff if \$80,000 is paid, where it goes. Mr. Brown stated that it would be kept on file or in escrow at City Hall until the improvements are completed.

Chairman Wessling asked if the money would go to the former developer who is the property owner. Mr. Brown stated it would be held by the City and if the improvements are not completed in a set amount of time the City would use the money to complete the improvements.

Attorney Jed Workinger of Builders Mortgage Co, LLC commented that they are being asked to pay a share of an agreement between the developer and the City. He stated that the City dropped the ball and let the letter of credit expire. He explained they are being asked to charge the six property lot owners already in the development and they have no right to ask them. He stated this is where the constitutional argument comes in. He stated the current property owners cannot be asked to pay for the improvements. He stated the improvements will ultimately be paid twice because the City will pay for the improvements and the homeowners will be asked to pay again for these improvements. He stated that all improvements except for the community building could be completed if the letter of credit had not been allowed to expire. He stated that the ordinance does not require a deposit for improvements to off-site properties.

Attorney Jensen stated that the homeowners' association will not own the property that the community building is to be built on. He explained that the common area is supposed to be declared immediately to the association and this did not happen which is why this is a difficult situation. He stated that if the association is formed and functioning, the homeowners can sue them at that time because the community building lot was not deeded over. He suggested that the club house will not be built because it is TSM Developments property and not the City's property or the homeowners' property.

Commissioner Rosand asked if there is an agreement between TSM and the City that would allow improvements to the property. Mr. Brown stated that the 2006 site security agreement is still in effect and would affect the entire boundary of the development. He stated that the property owner of Outlot A is responsible to submit the letter of credit.

Assistant City Attorney Brodie stated that if the plan is revised the escrow will change accordingly. He explained that they will not draw on the lines of credit to complete the club house. He stated that the City has the authority to require this. He stated that the 60-day rule does not apply. He stated that the Board is to confirm that staff has made a correct interpretation of the Code relating to the appeal and the requirements made of the developer or contractor of the four houses.

Chairman Wessling stated that the Board can uphold the City staff's position or dismiss it. He explained that they cannot change the Code for this situation.

Attorney Workinger stated he disagreed with Assistant City Attorney Brodie's comment that they can make improvements on a property that they do not own. He stated this is not fair.

Attorney Jensen stated that staff could have based a decision on the previous permit and decided to limit the improvements and have an escrow be of a lesser amount so that this can be resolved.

Chairman Wessling asked if the basis of the issue is the community building. Attorney Jensen stated that it is.

Chairman Wessling stated the escrow amounts for the improvements would all apply with the exception of those for the community building. He stated that would change the amount reducing it to \$114,000.

Attorney Workinger stated that the security agreement does not mention the community building. He explained that the City is adding this. He suggested that if the City would impose an escrow requirement of \$20,000 or more for each of those lots the development will continue to be stagnant. He explained that the market has collapsed and home values have fallen. He explained that the home values in the development are now only \$125,000.

Attorney Jensen stated that the City has a letter of credit to enforce the security agreement with the developer to build the club house. He asked that the City enforce this. He asked that the four houses be allowed to be built so they are not tied up for years in this process.

Chairman Wessling asked staff what could be done for the four houses as there is no functioning association and the common area is in question and the builder is either out of business or not.

Assistant City Attorney Brodie stated that Code provides that the Board could uphold staff's decision to not allow or they could not uphold the staff position and look at making an additional adjustment regarding the building with conditions. He asked for a recess while information is reviewed. He stated that the appeal could be dropped and a new agreement could be reached with staff.

Chairman Wessling called a recess at 7:32 p.m.

Chairman Wessling reconvened the meeting at 8:23 p.m.

Assistant City Attorney Brodie stated that they made progress in a discussion between attorneys but have not come to an agreement. He asked that the Board make a decision and offered that overriding staff's position required by a minimum of 2/3 vote of the membership. He stated that either party has 10 days to appeal to Council. He suggested moving on so the process would continue. He stated the applicant does not want to table the decision because they want things to move forward. He stated that there is an unusual fact pattern and an unusual development from the beginning.

Chairman Wessling stated there were problems along the line with the developer but that the City Code was followed correctly.

MOTION BY COMMISSIONER THORUP, SECOND BY COMMISSIONER SPANO-MADDEN, IN CASE 09-4V TO DENY THE APPEAL OF CITY STAFF'S INTERPRETATION OF CITY CODE, FINDING THAT CITY CODE SECTION 11-327 REQUIRES THAT THE OWNER MUST FILE A LETTER OF CREDIT, PERFORMANCE BOND, OR CASH ESCROW IN THE AMOUNT OF 150 PERCENT OF THE COST OF SITE IMPROVEMENTS PRIOR TO ISSUANCE OF A BUILDING PERMIT BASED ON THE FINDINGS IN CITY STAFF'S STATEMENT OF REASONS FOR DENIAL DATED THE 1<sup>ST</sup> DAY OF OCTOBER 2009.

Commissioner Rosand stated that item number one relating to the 60-day rule is not their place to determine. She asked if this is in City Code. Assistant City Attorney Brodie stated that it is in reference to a state statute.

THE MOTION PASSED UNANIMOUSLY.

Chairman Wessling stated that the applicant has the right to appeal this decision and to continue to work with staff.

Attorney Jensen stated that he appreciated the time and work the Board put into the decision. He stated that he realized their position and role and would like to see a resolution.

## 2. ADJOURNMENT

MOTION BY COMMISSIONER ROSAND, SECOND BY COMMISSIONER THORUP, TO ADJOURN THE MEETING AT 8:34 P.M. THE MOTION PASSED UNANIMOUSLY.

Respectfully submitted,  
Beth Bostrom  
Board of Adjustment and Appeals Secretary

STATE OF MINNESOTA

CITY COUNCIL

COUNTY OF ANOKA

CITY OF COON RAPIDS

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IN THE MATTER OF THE APPEAL OF STAFF INTERPRETATION OF SECTION 11-327 OF COON RAPIDS REVISED CITY CODE – 1982, REGARDING THE FILING OF SECURITIES TO GUARANTEE THE CONSTRUCTION OF CERTAIN IMPROVEMENTS ON LOTS 2, 6 AND 7, BLOCK 2; LOT 3, BLOCK 3 AND OUTLOT A, ALL IN VILLAS ON THE BOULEVARD, ANOKA COUNTY, MINNESOTA; SW WOLD CONSTRUCTION, INC. ON BEHALF OF BUILDERS MORTGAGE COMPANY, LLC, APPLICANT

CASE 09-4V

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STATEMENT OF REASONS FOR DENIAL

This matter came before the Coon Rapids City Council on November 17, 2009, for a final decision subject to appeal to the City Council within ten days.

Based upon the testimonies received and upon all other information brought before the Board, the Board hereby denies the appeal and upholds the staff interpretation of City Code based on the following reason(s):

1. The 60 day rule under Minn. Statute 15.99 does not apply to the issuance of building permits.
2. City Code Section 11-327 requires that a property owner must file a letter of credit, performance bond, or cash escrow in the amount of 150% of the cost of site improvements prior to issuance of a building permit.
3. On June 3, 2009, the Applicant submitted applications for building permits to complete construction of detached townhome units at 11000, 11035, and 11040 Dahlia Street and 2780 110<sup>th</sup> Avenue NW in the Villas on the Boulevard development.
4. City Staff provided notice to Applicant regarding requirement of City Code Section 11-327 beginning as early as June 4, 2009.
5. All property owners in the Villas on the Boulevard development have an interest in Outlot A, Villas on the Boulevard, which is to be owned by the homeowners' association.

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6. Applicant is allowed to either submit a security for the entire development costs or Applicant may file security in an amount proportionate to their current property interests.
  7. Because a letter of credit, performance bond, or cash escrow is not in place, the City cannot issue building permits for the properties.

Adopted by the Coon Rapids Board of Adjustment and Appeals on a \_\_\_\_ to \_\_\_\_ vote this 17<sup>th</sup> day of Novmember, 2009.

\_\_\_\_\_  
Tim Howe,  
Mayor

ATTEST:

\_\_\_\_\_  
Joan Anderson,  
City Clerk





TO: Mayor and City Councilmembers *mff*  
FROM: Matt Fulton, City Manager  
SUBJECT: Miscellaneous Assessment Process  
DATE: November 17, 2009

11

## INTRODUCTION

Staff would like to present options for hearing code violation appeals prior to assessment. There are currently about 500 parcels pending assessment.

## DISCUSSION

As you know, the number of assessments for code violations has increased dramatically due to not only increased enforcement efforts, but also the housing economy. Staff understands the position it puts the City Council in when it comes to assessing these against the property and has been exploring alternate ways to accomplish this. Minnesota Statutes 429 sets out the procedure that staff has been following, which requires a public hearing by the City Council. However, there may be options to alleviate some of the difficulty that this has caused.

One alternative may be to consider adding a step to the process in which property owners must appeal first to another body, called an Assessment Appeal Board, composed of five citizens appointed by the City Council on the first meeting of the year. The present Board of Adjustment and Appeals was considered, but these appeals seem to be out of the realm of their purpose, which is building related. The City Council would refer appeals to the Assessment Appeal Board for their recommendation.

Once the Assessment Appeal Board hears the appeal and makes a recommendation to the City Council, the City Council would act on the assessments.

Although this memo was not meant to address the process for abating violations, further steps are being considered in which to clarify events of the abatement including additional documentation, photos and evaluation of contractual services received. Attempts will be made to change the law regarding the assessment process. Obviously that could not be in place until after the spring season when abatements swing into gear.

On January 5, 2010, staff would like to recommend calling for a public hearing on these miscellaneous assessments for Tuesday, February 2 but Council direction is needed. Time is of the essence.

## RECOMMENDATION

Staff recommends creating an Assessment Appeal Board to hear the appeals and make recommendations to the City Council.







TO: Mayor, City Councilmembers, City Manager *my*

FROM: Kevin Vouk, Manager of Accounting/Treasurer *KV*

SUBJECT: Ordinances Revising Fees for 2010 *sh*

DATE: November 17, 2009

## INTRODUCTION

Council is being asked to consider introducing ordinances to adjust certain fees and building inspection fees for 2010.

## DISCUSSION

The ordinances include fees which are recommended for 2010. Fees set by resolution will be presented when these ordinances are considered for adoption at the December 1, 2009 City Council meeting.

The fees for 2010 have been adjusted by the 2009 annual adjustment of 3.0% with exceptions noted below. A request for a rate change is made only if the adjustment is enough for the fee to be rounded to the next significant dollar amount. Items to note are as follows:

### **Ordinance Adjusting Certain Fees (see reference number in ordinance)**

- (1) *Fees set by State Statute.* Certain fees under Section 5-209 (alcoholic beverages) and the gambling investigation fee under Section 5-2008 of the City Code are set by Minnesota Statutes and did not change for 2010.
- (2) *On-sale liquor license.* The on-sale liquor license was compared to the amount charged by other cities. Based on this review, staff determined that it should remain at the current rate of \$9,350 for 2010.
- (3) *Waste and Recycling Hauler License Fees.* Based on a review of comparable cities, these fees were increased in 2008 from \$55 to \$150 for the first vehicle with each additional vehicle at \$25 each. These fees vary widely, but the proposed amounts are common for larger cities in the area and staff recommends no change for 2010.
- (4) *Property Monitoring Fees.* A property monitoring fee was approved by the City Council in 2006. The 2007 fees were set at \$600 per year for residential property and \$1,000 per year for commercial property to cover related costs. Staff recommends no change for 2010.
- (5) In certain cases there may be no change in the fee due to rounding. For example, the liquor manager investigation fee which is rounded to the nearest \$5 had a calculated base amount of \$112.55 in 2009 and was rounded to \$115. For 2010, the calculated base increased to \$115.93, which rounded to the nearest \$5 is \$115.
- (6) Staff recommends that certain other fees not be increased for 2010 if they are adequate to cover current costs, are seldom used and therefore difficult to establish a cost basis, and/or are comparable to rates charged by other cities.

### **Ordinance Adjusting Building Inspection Fees**

Staff is recommending the following changes to the building inspections fee schedule for 2010:

- 1) The addition of a \$40 trip charge for all permits of less than \$50 that require a separate inspection. This is to cover staff and travel time in those cases where the permit fee itself is insufficient to cover those costs.
- 2) A certificate of occupancy fee for commercial and residential buildings with four or more units is recommended in the amount of \$100 or 5% of the building permit fee, whichever is greater.
- 3) A grading permit fee to be calculated in the same manner as building permits has been added. This will allow inspections of grading work to address slope, erosion, and other soil related issues.

Other sections of the inspection fee schedule will be unchanged for 2010.

### **Public Hearing for 3.2 Malt Liquor Licenses**

State law requires a public hearing on an increase to certain fees for the sale of alcoholic beverages. Fees are proposed to increase by \$5 for off-sale 3.2 malt liquor licenses and \$20 for on-sale 3.2 malt liquor licenses. Council is asked to set a public hearing regarding these fee increases for December 1, 2009 at 7:00 p.m.

### **RECOMMENDATION**

- a. Introduce an Ordinance to Revise Certain License Fees, Service Fees and Related Charges effective January 1, 2010; and
- b. Introduce an Ordinance Establishing Permit and Inspection Fees for the Building Inspections Division as Authorized by Minnesota Statutes Section 16B.62, subdivision 1 effective January 1, 2010; and
- c. Set a public hearing for December 1, 2009 at 7:00 p.m. regarding the fee increases for off-sale 3.2 malt liquor and on-sale 3.2 malt liquor.

attachments

12/6/16

## ORDINANCE NO.

## AN ORDINANCE TO REVISE CERTAIN LICENSE FEES, SERVICE FEES AND RELATED CHARGES AND ESTABLISHING AN EFFECTIVE DATE THEREFOR

The City of Coon Rapids does ordain:

Section 1. The following fees are hereby established for the licenses and permits in Title 5 of Revised City Code - 1982:

<u>Description</u>	<u>2009 fee</u>	<u>2010 fee</u>	<u>Section of City Code</u>	<u>For ref. only - see memo</u>
Off-sale 3.2 Malt Liquor	\$135	\$140	5-209	
On-sale 3.2 Malt Liquor	\$625	\$645	5-209	
Temporary 3.2 Malt Liquor, On-sale (per day)	\$30	\$30	5-209	6
Temporary On-sale Liquor License (per 4 hour event)	\$30	\$30	5-209	6
Tavern License (including public dancing)	\$540	\$555	5-209	
Bottle Clubs (including public dancing)	\$300	\$300	5-209	1
Public Drinking Place	\$540	\$555	5-209	
Intoxicating liquor, clubs, as defined in Minnesota Statutes Section 340A.101, Subd.7:				
(a) Clubs with membership of 200 or less	\$300	\$300	5-209	1
(b) Clubs with membership of 201 to 500 members	\$500	\$500	5-209	1
(c) Clubs with membership of 501 to 1,000 members	\$650	\$650	5-209	1
(d) Clubs with 1,001 and 2,000 members	\$800	\$800	5-209	1
(e) Clubs with 2,001 and 4,000 members	\$1,000	\$1,000	5-209	1
(f) Clubs with 4,001 and 6,000 members	\$2,000	\$2,000	5-209	1
(g) Clubs with 6,001 members or more	\$3,000	\$3,000	5-209	1
Off-Sale Intoxicating Liquor License	\$300	\$300	5-209	1
On-Sale Intoxicating Liquor License	\$9,350	\$9,350	5-209	2
Sunday sales	\$200	\$200	5-209	1
On-Sale Wine License				
(a) For seating capacity of at least 35, but no more than 99	\$1,000	\$1,000	5-209	1
(b) For seating capacity of 100 or more	\$2,000	\$2,000	5-209	1
On-Sale establishments open after 1:00 AM	\$300	\$300	5-209	1
Liquor Licensing Investigation Fee	\$450	\$460	5-211	
Liquor Manager Investigation Fee	\$115	\$115	5-211	5
Amusement Center License	\$415	\$425	5-305	
Archery Club License	\$70	\$70	5-405	5
Bowling License	\$58	\$60	5-604	
Carnival License for 0-5 Rides	\$275	\$285	5-704	
Carnival License - Additional Ride	\$33	\$34	5-704	

Circus License	\$345	\$355	5-704	
				<i>For r. only - se.</i>
<u>Description</u>	<u>2009 fee</u>	<u>2010 fee</u>	<u>Section of City Code</u>	<u>memo</u>
Circus License-Additional Day	\$39	\$40	5-704	
Christmas Tree Sales License	\$72	\$74	5-804	
Tobacco License	\$160	\$165	5-905	
Tobacco License Investigation Fee	\$115	\$120	5-905	
Dancing Permit - annual	\$135	\$140	5-1004	
Dancing Permit - per event	\$25	\$30	5-1004	
Gun Club License	\$70	\$70	5-1105	
Parade Permit	\$25	\$25	5-1204	6
Taxi License - vehicle	\$39	\$40	5-1308	
Taxi License - driver	\$26	\$26	5-1308	5
Taxi License Investigation	\$25	\$25	5-1308	5
Theatre - 1st screen	\$300	\$310	5-1406	
Theatre - additional screens	\$43	\$44	5-1406	
Peddler License - Fireworks/All Other per day	\$60/10	\$60/10	5-1507	6
Peddler License - Fireworks/All Other per week	\$150/30	\$150/30	5-1507	6
Peddler License - Fireworks/All Other per month	\$300/60	\$300/60	5-1507	6
Peddler License - All Other for 6 months	\$300	\$300	5-1507	6
Peddler License Investigation Fee – each applicant	\$25	\$25	5-1507	6
Tree Trimmer License	\$61	\$63	5-1607	
Massage Parlor Business License	\$4,260	\$4,390	5-1811	
Masseur/Masseuse License	\$155	\$155	5-1811	5
Massage Parlor Investigation Fee	\$2,130	\$2,190	5-1811	
Masseur License Investigation Fee	\$370	\$380	5-1811	
Conversation Parlor License	\$3,380	\$3,480	5-1905	
Gambling Investigation Fee	\$250	\$250	5-2008	1
Adult Oriented Business - Annual License	\$6,550	\$6,750	5-2209	
Adult Oriented Business - Investigation Fee	\$1,960	\$2,020	5-2209	
Adult Oriented Business per 5-2202(17)				
- Annual License	\$155	\$160	5-2209	
Adult Oriented Business per 5-2202(17)				
- Investigation Fee	\$430	\$445	5-2209	
Fireworks Display Permit	\$100	\$100	5-2307	6
Pawnshop License	\$2,620	\$2,700	5-2405	
Pawnshop Investigation Fee	\$370	\$380	5-2405	
Pawnshop New Manager Investigation Fee	\$115	\$115	5-2410	5
Pawnshop Transaction Fee				
-modem reporting	\$1.50/trans.	\$1.50/trans.	5-2405	6
-manual reporting	\$2.50/trans	\$2.50/trans	5-2405	6
Special Event Parking Permit	\$70	\$70	5-2508	5
Secondhand/Antique Dealers License-A	\$295	\$305	5-2612	
Secondhand/Antique Dealers License-B	\$135	\$140	5-2612	
Secondhand/Antique Dealers Investigation Fee-A	\$345	\$355	5-2612	
Secondhand/Antique Dealers Investigation Fee-B	\$69	\$71	5-2612	

12/16/10

<u>Description</u>	<u>2009 fee</u>	<u>2010</u>	<u>Section of City Code</u>	<i>For ref. only - see memo</i>
Secondhand/Antique Dealers New Manager Investigation Fee	\$115	\$115	5-2605	5
Secondhand/Antique Dealers Transaction Fee				
-modem reporting	\$1.50/trans	\$1.50/trans	5-2612	6
-manual reporting	\$2.50/trans	\$2.50/trans	5-2612	6
Exhibition Operator Permit (per event)	\$980	\$1,010	5-2628	
Exhibitor Permit (per event)	\$39	\$40	5-2628	
Precious Metals License	\$2,620	\$2,700	5-2711	
Precious Metals Investigation Fee	\$345	\$355	5-2711	
Precious Metals New Manager Investigation Fee	\$115	\$115	5-2711	5
Precious Metals Transaction Fee				
-modem reporting	\$1.50/trans	\$1.50/trans	5-2711	6
-manual reporting	\$2.50/trans	\$2.50/trans	5-2711	6
Currency Exchange License	\$70	\$70	5-2805	5
Therapeutic Massage Enterprise License	\$300	\$305	5-2907	
Massage Therapist License	\$42	\$43	5-2907	
Therapeutic Massage Enterprise Investigation Fee	\$370	\$380	5-2907	
Massage Therapist - Investigation Fee	\$42	\$43	5-2907	

Section 2. The following fees are hereby established for the services in Title 8 of

Revised City Code - 1982:

<u>Description</u>	<u>2009 fee</u>	<u>2010 fee</u>	<u>Section of City Code</u>	
Waste and Recycling Hauler License				
First Vehicle	\$150	\$150	8-211	3
Each Additional Vehicle	\$25	\$25	8-211	3
Response to False Alarms (4-5)	\$45	\$46	8-1403	
Response to False Alarms (6-9)	\$90	\$92	8-1403	
Response to False Alarms (10 or more)	\$180	\$185	8-1403	

Section 3. The following fees are hereby established for the permits and approvals in

Title 11 of Revised City Code - 1982:

<u>Description</u>	<u>2009 fee</u>	<u>2010 fee</u>
Conditional Use Permit with Site Plan Review	\$510 plus recording fees	\$525 plus recording fees
Conditional Use Permit without Site Plan Review	\$300 plus recording fees	\$305 plus recording fees
Conditional Use Permit/Mining Permit	\$200	\$205
Planned Unit Development	\$1,290	\$1,330
Revision to Final Planned Unit Development	\$285	\$295

<u>Description</u>	<u>2009 fee</u>	<u>2010 fee</u>
Site Plan Review - Residential	\$770	\$795
Site Plan Review - Commercial	\$415	\$425
Lot Split or Registered Land Survey in lieu of lot split	\$260	\$265
Preliminary Plat	\$425	\$440
Final Plat	\$145	\$150
Registered Land Survey in lieu of plat	\$425 plus recording fees	\$440 plus recording fees
Comprehensive Plan Amendment	\$610	\$630
Rezoning	\$400	\$415
Variance	\$240 plus recording fees	\$250 plus recording fees
Vacation	\$275	\$280

Section 4. The following fees are hereby established for the services in Title 12 of

Revised City Code – 1982:

<u>Description</u>	<u>2009 fee</u>	<u>2010 fee</u>	<u>Section of City Code</u>	<i>For ref. only - see memo</i>
Sign Contractor License	\$50	\$50	12-106	6
Residential Property Monitoring	\$600 per yr	\$600 per yr	12-3123	4
Commercial Property Monitoring	\$1,000 per yr	\$1,000 per yr	12-312	4
Excessive Inspection Services Fee	\$145	\$150	12-317	

Section 5. Effective Date of Ordinance. This ordinance shall be effective for all annual permits and/or licenses issued for 2010 and succeeding years, and for all other permits and licenses issued after January 1, 2010.

Introduced the 17th day of November, 2009.

Adopted the \_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Tim Howe, Mayor

ATTEST:

\_\_\_\_\_  
Joan A. Anderson, City Clerk

12a/b/c

**ORDINANCE NO.**

**AN ORDINANCE ESTABLISHING PERMIT AND INSPECTION FEES FOR  
THE BUILDING INSPECTIONS DIVISION AS AUTHORIZED BY MINNESOTA  
STATUTES SECTION 16B.62, SUBD. 1**

**The City of Coon Rapids does ordain:**

Section 1. The City Council for the City of Coon Rapids establishes the following permit and inspection fees for the Building Inspection Division:

**2010  
INSPECTION DIVISION FEE SCHEDULE  
( ref. MN Rules 1300.0160, subd. 1, subd. 2 )**

Table A - 2010

VALUATION		FEE
FROM	TO	
\$0	\$300	\$15.00
\$301	\$1000	\$15.00 for the first \$300 plus \$5.00 for each additional \$100 or fraction thereof, up to and including \$1,000
\$1001	\$2000	\$50.00 for the first \$1,000 plus \$3.05 for each additional \$100 or fraction thereof, up to and including \$2,000
\$2001	\$25,000	\$80.50 for the first \$2,000 plus \$14.00 for each additional \$1,000 or fraction thereof, up to and including \$25,000
\$25,001	\$50,000	\$402.50 for the first \$25,000 plus \$10.10 for each additional \$1,000 or fraction thereof, up to and including \$50,000
\$50,001	\$100,000	\$655.00 for the first \$50,000 plus \$7.00 for each additional \$1,000 or fraction thereof, up to and including \$100,000
\$100,001	\$500,000	\$1,005.00 for the first \$100,000 plus \$5.60 for each additional \$1,000 or fraction thereof, up to and including \$500,000
\$500,001	\$1,000,000	\$3,245.00 for the first \$500,000 plus \$4.75 per \$1,000 or fraction thereof, up to and including \$1,000,000

\$1,000,001	and up	\$5,620.00 for the first \$1,000,00 plus \$4.25 per \$1,000 or fraction thereof
-------------	--------	---

\$40 Trip charge will be added to all permits of less than \$50 that require a separate inspection.

**Re-Inspection Fee:**

First	\$100
Second	\$200
Third and subsequent	\$300

Re-inspections fees will be charged by the Chief Building Official, or designee, where additional time and expense is incurred by the City in order to complete a required inspection. Incidents where such fees may be charged include, but are not limited to: work unprepared for a scheduled inspection; failure to cancel a scheduled inspection; work required by correction orders that is not completed; or work does not pass a secondary inspection.

**Building Permit Fees:**

Minimum permit fee shall be \$15.00 for work valued up to \$300. A plan check fee of 65% of the permit fee will be charged on all projects for which plans are submitted except as noted in MR1300.

**Exceptions to Table A-2010:**

The permits for the described work on residential properties (three units or less) will be as follows per unit:

Re-roof	as provided in Table A-2010 but not to exceed \$250
Re-side	as provided in Table A-2010 but not to exceed \$250

Mobile Home Installation	\$ 75
Demolition	\$100
Move Building Out of City	\$100
Residential Curb or Street Cut/Driveway	\$100
Commercial/Industrial Parking Lot	Table A-2010
Site visit without improvements	\$ 75
Certificate of Occupancy Fee Commercial and Residential buildings 4 or more units	\$100.00 or 5% of building permit fee whichever is greater.



12a/b/c

### Plumbing Permit Fees:

Table A-2010 will be used to calculate permit fees. Minimum permit fee shall be \$15.00 for work valued up to \$300.

Exceptions to Table A-2010: The permits for the described work on residential properties (three units or less) shall be as follows per unit:

Residential Water Heater	\$60.00
Residential Water Softner	\$40.00

When applicable, a plan review charge equal to 35 percent of the permit fee will be added.

### Sewer and Water Permit Fees:

Water Connection	\$100
Sewer Connection	\$100
Water/Sewer Repair	\$100
On Site Sewer	\$250
Storm Sewer	Table A-2010

When applicable, a plan review charge equal to 35 percent of the permit fee will be added.

### Grading Permit:

Table A-2010 will be used to calculate grading permit fees. A plan check fee of 65% of the permit fee will be charged on all grading projects.

### Mechanical Permit Fees (Heating, Ventilation, Air Conditioning):

Table A-2010 will be used to calculate permit fees. Minimum permit fee shall be \$15.00 for work valued up to \$300.

Exceptions to Table A-2010: The permits for the described work on residential properties (three units or less) shall be as follows per unit:

Furnace and/or A/C replacement as provided in Table A-2010 but not to exceed \$250

When applicable, a plan review charge equal to 35 percent of the permit fee will be added.

### Electrical Permit Fees

The permit fee shall be \$40 plus 1.75 percent of the value of the work to be done, except the fee to install, replace or repair one electrical item including the equipment served shall be \$40.

When applicable, a plan review charge equal to 35 percent of the permit fee will be added.

**Gas Piping Fees**

Per Opening	\$ 12
Minimum Fee (if gas only)	\$ 40

**Fuel Storage Tanks**

Underground Remove/Install	\$200
Aboveground Remove/Install	\$200
Replace Existing with Similar	\$250

**Fire Protection Systems.**

Sprinkler System:	
First 10 Heads	\$100
Each Additional 10 Head	\$ 20
Fire Pump	\$100
Special Fire Suppression System	\$100
Fire Alarm Permit	\$100
Each Additional Panel	\$100
Each Alarm Device	\$ 2

**Refund of Permit Fees (ref. Mn Rules 1300.0160, Subd. 9) :**

The City may refund fees for permits on which no work has been done and no inspections have been made. Requests for refunds must be in writing and signed by the permit holder. The Chief Building Official must approve each refund and the City shall retain the following:

\$50.00 for requests made within 30 days

\$50.00 or 20% of the permit whichever is greater for requests made within 60 days

\$50.00 or 40% of the permit whichever is greater for requests made within 90 Days

\$50.00 or 60% of the permit whichever is greater for requests made within 120 days

\$50.00 or 80% of the permit whichever is greater for requests made within 180 days

NO REFUND is available after 180 days.

Plan check fees, state surcharge fee, and re-inspection fees are not refundable.

*[Signatures on the following page]*

12a/b/c

Introduced this 17<sup>th</sup> day of November, 2009.

Adopted this \_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
Tim Howe, Mayor

ATTEST:

\_\_\_\_\_  
Joan A. Anderson, City Clerk





TO: Mayor, City Councilmembers  
FROM: Matt Fulton, City Manager  
SUBJECT: Reconsider Ordinance No. 2023 Updating  
the Regulation for Open Burning  
DATE: November 17, 2009

### INTRODUCTION

Council is asked to reconsider the Ordinance updating the regulation for open burning that was adopted at the November 4 Council meeting.

### DISCUSSION

Councilmember Schulte has indicated that he would like to reconsider certain provisions of the recently enacted Ordinance regarding Recreational Burning. He is able to request reconsideration since he was in the majority vote of the Council when this ordinance was considered at your last meeting. His request requires a second from another member of the Council who voted in the majority and a majority vote of the Council.

Councilmember Schulte will be able to express his concerns and suggested modifications at the Council meeting on Tuesday.

### ACTION REQUESTED

Council is asked to reconsider Ordinance No. 2023 adopted November 4, 2009, Updating the Regulation for Open Burning.

## ORDINANCE NO. 2023

### AN ORDINANCE UPDATING THE REGULATION OF OPEN BURNING THEREBY AMENDING REVISED CITY CODE - 1982 SECTION 12-415

The City of Coon Rapids ~~does~~ ordain:

Section 1. Revised City Code - 1982 Section 12-415 is hereby amended as follows

(deletions in brackets, additions double underlined)

#### 12-415 Open Burning.

~~[(1) Open Burning Prohibited. Except as otherwise permitted by this section, all open burning is prohibited in the City of Coon Rapids.~~

~~(2) Definitions. For the purposes of this section the following definitions shall apply:~~

~~(a) "Open Fire" or "Open Burning" means a fire burning in matter, whether concentrated or dispersed, which is not contained within a fully enclosed firebox, structure or vehicle, and from which the products of combustion are emitted directly to the open atmosphere without passing through a stack, duct or chimney.~~

~~(b) "Person" includes any natural person acting either personally or in any representative capacity, a corporation, a firm, a co partnership, or an association of any nature or kind.~~

~~(c) "Starter Fuels" mean dry, untreated, unpainted wood or charcoal fire starter. Paraffin candles and alcohols are permitted as starter fuels and as aids to ignition only. Propane gas torches or other clean gas burning devices causing minimal pollution must be used to start an open fire.~~

~~(d) "Wood" means dry, clean fuel only such as twigs, branches, limbs, "presto logs", charcoal, cord wood or untreated dimensional lumber. "Wood" does not include wood that is green, leaves or needles, rotten, wet, oil soaked or treated with painted, glue or preservatives. Clean pallets may be used for recreation fires when cut into three foot lengths.~~

~~(e) "Recreational Fire" means a fire set for cooking, warming or ceremonial purposes which is not more than three feet in diameter by 3 feet high, and has had the ground five feet from the base of the fire cleared of all combustible material.~~

~~(f) "Burning Permit" is a permit issued by the City Fire Chief or designee authorizing fires exempted from the general provisions hereof and setting conditions therefor.~~

~~(g) "Burner" means a firebox, barrel or similar container used for an outdoor fire, but not including grills or barbecues used principally for the cooking of food.~~

~~(3) Exemptions. The following types of open burning shall be exempt from the prohibition of Section 12-415 (1):~~

~~(a) Recreational fires subject to the conditions of Section 12-415 (12).~~

~~(b) Fires purposely set under the supervision of the City Fire Department for the instruction and training of fire fighting personnel.~~

~~(c) Fires for which a burning permit has been obtained.~~

(4) Burning Permit. Except for permits issued by the Minnesota Department of Natural Resources for fire training and permanent burn sites, the City Fire Chief or designee may issue a burning permit for any of the following:

(a) Fires set for the elimination of a fire hazard which cannot be abated by any other practical means.

(b) Fires purposely set for forest and game management purposes when no other alternative methods are practical.

(c) The burning of trees, brush, grass and other vegetable matter in the clearing of land, the maintenance of street, roadway, highway or railroad right of way and in accepted agricultural land management practices where chipping, composting, landscaping or other alternative methods are not practical.

(d) The disposal of diseased trees generated on site, diseased or infected nursery stock or disease bee hives.

(e) Ground thawing for utility repair and construction.

(5) Prohibited Materials.

(a) No permit may be issued for the open burning of oils, petro fuels, rubber, plastics, chemically treated materials or other materials which produce excessive or noxious smoke such as tires, railroad ties, treated, painted or glued wood, composite shingles, tar paper, insulation, composition board, sheetrock, wiring paint or paint fillers.

(b) No permit shall be issued for the open burning of hazardous waste or salvage operations, solid waste generated from an industrial or manufacturing process or from a service or commercial establishment, or building material generated from demolition of commercial or industrial structures, or discarded material resulting from the handling, processing, storage, preparation, serving or consumption of food.

(6) Procedure for Permit Issuance.

(a) Application for a burning permit shall be submitted to the City Fire Chief on a form prescribed by the City.

(b) The Fire Chief, or designee, shall review the application to insure compliance with the provisions of this section and any applicable State laws and/or regulations.

(c) The Fire Chief, or designee, may inspect the proposed burn site on such occasions and at such time as is deemed necessary to adequately review the application. Submission of the application shall constitute authorization for the Fire Chief, or designee, to enter the premises for this purpose.

(d) Within five business days, excluding Saturdays, Sundays and legal holidays, after receipt of the application the Fire Chief, or designee, shall either grant or deny the application.

(7) Denial of Permit.

(a) Application for a burning permit may be denied for any one of the following reasons:

(i) The proposed fire or burn site does not meet the requirements of this section.

(ii) The Fire Chief, or designee, determines that there is a practical alternative method of disposal of the material.

(iii) The Fire Chief, or designee, determines that the fire would result in a pollution or nuisance condition.

(iv) The Fire Chief, or designee, determines that the burn cannot be safely conducted and no plan has been submitted to adequately address the safety concerns.

~~(v) The location of the burning shall not be within 600 feet of an occupied residence other than those located on the property on which the burning is conducted.~~

~~(b) The denial of any application shall be in writing and shall state the reasons for the denial.~~

~~(c) Any person aggrieved by the denial of a burning permit may appeal that decision to the City Council by submitting a written request or appeal to the Fire Chief's office within ten days after the date of the denial. Fire Chief's office shall submit the appeal request to the City Manager for placement on the next available agenda.~~

~~(8) Responsibilities of Permit Holder. The holder of any permit shall be responsible for the following:~~

~~(a) Have a valid permit in possession at the burn site at all times during the burn.~~

~~(b) Prior to starting burn, confirming that no burning ban or air quality alert is in effect.~~

~~(c) Constant attendance by the permit holder or competent representative during a burn event.~~

~~(d) Availability at the burn site of appropriate communication and fire suppression equipment as required by the permit or any fire safety plan approved by the City as part of the permit process.~~

~~(e) Not allowing the fire to smolder.~~

~~(f) Being sure that the fire is completely extinguished before the permit holder or representative leaves the site.~~

~~(g) All costs incurred as a result of the burn including, but not limited to, fire suppression, administrative fees, property damage and personal injuries.~~

~~(9) Revocation of Permit. An officer of the Minnesota Department of Natural Resources, the City Fire Chief or the Assistant Fire Chief may revoke any burning permit for appropriate reasons including, but not limited to:~~

~~(a) A fire hazard exists or develops during the course of the burn.~~

~~(b) Pollution or nuisance conditions develop during the course of the burn.~~

~~(c) The fire smolders with no flame present.~~

~~(d) Any of the conditions of the permit are violated during the course of the burn.~~

~~(10) Burning Ban or Air Quality Alert. No recreation fire or open burn will be permitted when the City or the Minnesota Department of Natural Resources has officially declared a burning ban due to potential hazardous fire conditions or when Minnesota Pollution Control Agency has declared an air quality alert.~~

~~(11) Use of Burners Prohibited. No person shall use a burner within the City.~~

~~(12) Recreational Burning. Recreational fires shall comply with the following requirements:~~

~~(a) Burning shall occur between 9:00 a.m. and 12:00 midnight during any day of the week.~~

~~(b) The fire shall not exceed three feet in diameter and a flame height of approximately three feet.~~

~~(c) Only clean wood or charcoal may be burned. No burning of trash, leaves or brush is allowed.~~

~~(d) The fire is ignited with an approved starter fluid.~~



~~(e) The fire is constantly attended by a person knowledgeable in the use of fire extinguishing equipment and an attendant supervises the fire until the fire has been totally extinguished.~~

~~(f) Fire extinguishing equipment, such as buckets, shovels or garden hoses, are readily available.~~

~~(g) Fire is not conducted within 25 feet of a structure or combustible materials.~~

~~(h) Any conditions that could cause a fire to spread to within 25 feet of a structure shall be removed or eliminated prior to ignition.~~

~~(i) Outdoor barbecue pits shall be constructed of concrete or approved noncombustible materials and shall not be located within 25 feet of combustible walls, roofs or other combustible material.~~

~~(13) Rules Adopted by Reference. Minnesota Statutes Sections 88.01 to 88.22, 88.75 and 88.76 are hereby adopted by reference and made a part of this section as if fully set forth herein.~~

~~(14) Severability. If any sections, subsection, sentence, clause or phrase of this code section is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of the code section.~~

~~(15) Penalty. Any person violating any provision of this section is guilty of a misdemeanor and upon conviction shall be punished by a fine and/or imprisonment in accordance with law.]~~

(1) Adoption of State Law by Reference. The provisions of Minnesota Statutes, Chapter 88, as they may be amended from time to time, with reference to the definition of terms, conditions of operation, permits, and all other matters pertaining to open burning are hereby adopted by reference and are made a part of this Chapter as if set out in full. It is the intention of the City Council that all future amendments of Minnesota Statutes, Chapter 88, are hereby adopted by reference or referenced as if they had been in existence at the time this Chapter was adopted.

(2) City Regulations More Restrictive than State Law. The Council is authorized to impose, and has imposed in this Chapter, additional restrictions on open burning within its limits beyond those contained in Minnesota Statutes, Chapter 88, as it may be amended from time to time.

(3) Purpose. The purpose of this Chapter is to regulate open burning within the City of Coon Rapids, to protect the public health, safety and welfare. Through passage of this Chapter, the designated fire official is hereby authorized to adopt and impose burning restrictions to aid in the prevention of wildfire and to consult with the Department of Natural Resources (DNR), Division of Forestry to develop any restrictions or other criteria.

(4) Definitions. For purposes of this Chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

(a) "Designated Fire Official" means the Fire Chief, Fire Marshal, City Fire Warden, or other designee who provides fire protection or public safety services to the City.

(b) "Open Burning" means the burning of any matter if the resulting combustion products are emitted directly into the atmosphere without passing through a stack, duct or chimney, except a recreational or campfire as defined herein. Mobile cooking devices such as charcoal grills, wood smokers, manufactured hibachis, and propane or natural gas devices are not considered open burning devices.

(c) "Recreational Fire or Campfire" means a fire for recreational, ceremonial, or social food preparation conducted under the following restrictions:

(i) the fire is set only with an approved starter fuel; and

(ii) the fire is no more than three feet in height and contained within a recreational fire site; and

(iii) the fire burns using only dry, clean wood, producing little detectable smoke, odor or soot beyond the property line; and

(iv) the fire is conducted by a person at least 18 years of age tending the fire at all times; and

(v) fire extinguishing equipment such as an operable fire extinguisher, buckets, shovels or garden hoses must be readily available and located within 10 feet of the recreational fire site; and

(vi) no more than one recreational fire is allowed on a property at one time; and

(vii) no recreational fire or campfire is allowed when wind speeds exceed 15 miles per hour based on weather channel reports for sustained winds at the time of the fire; and

(viii) a recreational fire may only be conducted between the hours of noon and 10:00 PM Monday through Thursday with a maximum duration of four hours and between 12:00 noon and 12:00 midnight Friday through Sunday with a maximum duration of six hours per recreational fire; and

(ix) a recreational fire or campfire must burn cleanly in a manner that does not cause objectionable smoke beyond the property line, as determined by the fire official or a police officer; and

(x) the fire must be extinguished completely and not allowed to smolder before quitting the occasion.

(d) "Recreational Fire or Campfire Site" means an area of no more than a three foot diameter circle (as measured from the inside of the fire ring or border); completely surrounded by non-combustible and non-smoke or odor producing material, either natural rock, cement, brick, tile, blocks or ferrous metal. Burning barrels are not a recreational fire site as defined herein. Recreational fire sites shall not be located closer than 25 feet to any structure or combustible materials.

(e) "Running Fire" means an attended fire allowed to spread through surface vegetative matter under controlled conditions for the purpose of vegetative management, forest management, game habitat management, or agricultural improvement.

(f) "Starter Fuels" means dry, untreated, unpainted, kindling, branches or charcoal fire starter. Paraffin candles and alcohols are permitted as starter fuels and as aids to ignition only. Propane gas torches or other clean gas burning devices causing minimal pollution may be used to start an open burn.

(g) "Vegetative Materials" means dry leaves, dry grass clippings, twigs, branches, tree limbs, untreated or unpainted wood that contains no glues or resins, and other similar materials. Paper and cardboard are not considered vegetative materials.

(h) "Wood" means only dry, clean fuels such as twigs, branches, limbs, manufactured fireplace logs, charcoal, cord wood, or untreated dimensional lumber. "Wood" does not include wood that is green, leaves or needles, rotten, wet, oil soaked, or

treated with paint, glue or preservatives. Clean pallets may be used for recreational fires when cut into less than three foot lengths.

(5) Prohibited Materials.

(a) No person shall conduct, cause or permit the open burning of oils, petroleum fuels, rubber, plastic, chemically treated materials, or other materials that produce excessive or noxious smoke such as, but not limited to, tire, railroad ties, treated, painted or glued wood composite shingles, tar paper, insulation, composition board, sheet rock, wiring, paint or paint fillers.

(b) No person shall conduct, cause or permit the open burning of hazardous waste or salvage operations, solid waste generated from an industrial or manufactured process, materials from a service or commercial establishment, or building materials generated from demolition of commercial or institutional structures.

(c) No person shall conduct, cause or permit open burning of discarded materials resulting from the handling, processing, storage, preparation, serving or consumption of food.

(d) No person shall conduct, cause or permit the open burning of any leaves or grass clippings.

(e) The use of burners, as described in Minnesota Statute §88.16, subd. 2(d) are prohibited within the City's jurisdiction.

(6) Open Burning Prohibited Except by Permit. No person shall start or allow any open burning on any property in the city without first having obtained an open burning permit. A permit is not required for any fire which is a recreational fire or campfire as defined in Section (4).

(7) Permitted Open Burning.

(a) Under special or extraordinary circumstances, open burning permits may be issued by the city or by a DNR forestry official for:

(i) Elimination of health hazard that cannot be abated by other practical means, as determined by the commissioner of health or the local health authority.

(ii) Ground thawing for utility repair and construction.

(iii) Running fires.

(iv) Disposal of vegetative matter for managing forest, prairie or wildlife habitat, and in the development and maintenance of land and rights-of-way where chipping, composting, land-spreading or other alternative methods are not practical.

(v) Disposal of diseased trees generated on-site, diseased or infected nursery stock, or diseased bee hives.

(vi) Disposal of unpainted, untreated, non-glued lumber and wood shakes generated from construction, where recycling, reuse, removal or other alternative disposal methods are not practical.

(b) Fire training permits may only be issued by the Minnesota Department of Natural Resources (DNR).

(c) Permits for the operation of a permanent tree and brush burning site may only be issued by the Minnesota Department of Natural Resources (DNR).

(8) Permit Application and Fees.

(a) Open burning permits shall be obtained by making application on a form prescribed by the DNR and adopted by the Fire Department. The permit application shall be presented to the designated fire official for review.

(b) An open burning permit shall require the payment of a fee. Permit fees shall be in an amount established by the City Council.

(9) Permit Process:

(a) The applicant shall demonstrate to the designated fire official the ability to comply with the applicable state statutes, this Chapter, or any additional guidelines as may be adopted.

(b) Upon receipt of the completed open burning permit application and fee, the designated fire official may, if he or she believes necessary, require a preliminary site inspection to locate the proposed burn site, note special conditions, and set dates and times of permitted burn and review fire safety considerations, including the preparation of a detailed burn event safety plan with the designated fire official when conditions require.

(10) Denial of Permit.

(a) If the established criteria for the issuance of an open burning permit are not met, the application will be denied.

(b) Even if the established criteria for the issuance of an open burning permit are met, if it is determined that a practical alternative method for disposal exists, a pollution or nuisance condition would result, or if a burn event safety plan cannot be drafted to the satisfaction of the designated fire official, the application may be denied.

(11) Permit Holder Responsibility.

(a) Prior to starting an open burn, the permit holder shall be responsible for confirming that no burning ban or air quality alert is in effect.

(b) The open burning site shall have appropriate communication and fire suppression equipment available.

(c) The open burn shall be attended to at all times. No fire may ever be allowed to smolder. The fire shall be completely extinguished before the permit holder or his or her representative leaves the site. It is the responsibility of the permit holder to have a valid permit, as required by this Chapter, available for inspection on site by law enforcement, the Fire Department, a Minnesota Pollution Control Agency (MPCA) representative or DNR officer.

(d) The permit holder is responsible for compliance and implementation of all general conditions, special conditions, and guidelines as established in the permit issued. The permit holder shall be responsible for all costs incurred as a result of the burn, including but not limited to fire suppression and administrative fees.

(12) Revocation of Permit.

An open burning permit is subject to revocation at the discretion of a DNR officer or the designated fire official. Reasons for revocation include but are not limited to:

(a) A fire hazard existing or developing during the course of the burn.

(b) The burn is conducted in violation of any permit conditions during the course of the burn.

(c) Pollution or nuisance conditions developing during the course of the burn.

(d) A fire smoldering with no flame, or attendant, present.

(13) Burning Ban or Air Quality Alert.

(a) The designated fire official is authorized to determine when conditions make open burning potentially hazardous and declare a burning ban within the city.

(b) No recreational fire or open burn will be permitted when the city or the DNR has officially declared a burning ban due to potential hazardous fire conditions or when the MPCA has declared an air quality alert.

(c) A person conducting a recreational fire or campfire must immediately extinguish the fire if ordered to do so by the fire official or a police officer, when in the officer's sole discretion, the smoke is objectionable beyond the property line. Once so ordered, the recreational fire may not be re-started for a period of at least 12 hours, and then only when the fire complies with this Chapter.

(14) Administrative Penalties.

(a) A person violating any recreational fire or campfire provisions of this Chapter is subject to an administrative citation with a penalty of \$75.

(b) A person violating the recreational fire or campfire provisions of this Chapter a second or subsequent time within 18 months of a previous violation is subject to an administrative citation with a penalty of two times the previously imposed penalty.

(c) Failure to pay an administrative penalty within 30 days of the violation is a violation of this Chapter. Unpaid penalties may be collected as a special assessment against the property if the owner of the property was present during the recreational fire or if the Owner received written notice of the administrative citation within 14 days of the violation.

(d) A person who receives an administrative citation or written notice of an administrative citation may appeal the violation by following the procedure set forth in Section 2-1106.

(15) Criminal Penalty.

Violation of any provision of this Chapter, including maintaining a nuisance after being notified in writing, is a misdemeanor offense as defined by State law.

(16) Severability. If any provision of this Chapter is found to be invalid for any reason by a court of competent jurisdiction, the validity of the remaining provisions shall not be affected.

Section 2. Effective date of this ordinance is January 1, 2010.

Introduced this \_\_\_\_ day of \_\_\_\_\_.

Adopted this \_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
Tim Howe, Mayor

ATTEST:

\_\_\_\_\_  
Joan A. Anderson, City Clerk





**COON RAPIDS CITY COUNCIL**

## OTHER COUNCIL BUSINESS

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# CITY COUNCIL AGENDA

Tuesday, December 1, 2009

7:00 p.m.

Coon Rapids City Center  
Council Chambers

COUNCIL ACTION 12/01/09

Open Mic/Public Comment	
Call to Order	
Pledge of Allegiance	
Roll Call	
Adopt Agenda	
Cons. Approval of Minutes:	
a.	
Consent Agenda:	
a.	
Open Mic Reports:	
a.	
a. Public Hearing, 7:00 p.m.	
b. Cons. Proposal for a Multifamily Housing Development Project and Authorizing the Publication of a Notice of the Hearing (Tralee Terrace Project)	
2010 Fee Revisions:	
a. Public Hearing Regarding Fee Increases for Off-Sale and On-Sale 3.2 Malt Liquor, 7:00 p.m.	
b. Cons. Adoption of Ordinance to Revise Certain License Fees, Service Fees, and Related Charges	
c. Cons. Adoption of Ordinance Establishing Permit and Inspection Fees for the Building Inspections Division	
Other Council Business:	
Cons. Tentative Agenda of December 15, 2009	
Adjourn	

